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ABSTRACT

This is a description of a mythical election of mythical school board members in a mythical district in Illinois. The law, however, is based in Illinois statutes and court cases. The book is divided into four major sections, each of which is addressed to one of the important functionaries in the election process. The largest part is addressed to the secretary of the board of election. It takes him through the mythical election on a chronological basis. The foundation for this portion is the calendar of events, which is presented here. Sections also address the candidate for the board, the election judges, and the school attorney. Numerous legal forms are illustrated and key concepts are highlighted. (Author/IRT)

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The School Election in Illinois

Joseph A. Murphy

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Illinois Association of School Boards

EA 009 338

The School Election In Illinois

By JOSEPH A. MURPHY
Attorney at Law
Ancel, Glink, Diamond & Murphy

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Foreword

The Illinois Association of School Boards is deeply indebted to Joseph A. Murphy for the many hours he devoted to researching and writing this handbook. The school election – like all elections – must be above reproach, and this handbook will help school officials in carrying out their legal duties and following prudent practices.

There have been a number of changes in election laws in recent years, aimed primarily at reinforcing the right of voters to vote. Study of this handbook will ensure that school election officials are familiar with these recent changes.

However, *The School Election in Illinois* will probably find its most valuable use in the basic training of the school board secretary and election judges. Most of the handbook is devoted to the procedures that these important officials should follow in carrying out their duties. To that extent, the emphasis is on "how to do it and when to do it." Wise school boards which provide training programs for the secretary and election judges may find this handbook a useful training tool.

Also included is a much-needed section addressed to the school board candidate. Here are described the legal requirements for filing a valid nominating petition and meeting campaign disclosure laws. School board elections need to attract the best people that a community has to offer, and Mr. Murphy has removed any mystery that might have surrounded the filing process and the economic disclosure laws.

We sincerely hope that *The School Election in Illinois* will fill any information gaps that now exist for school board election officials. As with all IASB publications, we solicit comments and suggestions for future additions and improvements.

Harold P. Seamon
Executive Director
Illinois Association of School Boards

The Calendar of Election Events

Days Before The Election	Reference, 1975 Illinois Revised Statutes	The Event
100	Chapter 46 Section 20-2	First day for persons in the military service (and certain other classes of persons as defined in Chapter 46, Section 20-1) to make application for absentee ballot.
75	Chapter 122 Section 9-10	First day to publish notice of the time and place to file nominating petitions.
60	Chapter 46 Section 17-9	If a prospective voter is in the military service during the 60-day period prior to this election, he may vote, even though he is not registered, provided that he makes out the military service affidavit at the polls on election day.
		Recommended time to adopt the resolution calling the election.
55	Chapter 122 Section 9-10	Last day to publish notice of the time and place to file nominating papers.
45	Chapter 122 Section 9-10	First day to file nominating papers.
32	Chapter 127 Section 604A-105	First day for a candidate to file a declaration of intention to defer his filing of the statement of economic interests for 30 days after the due date.
30	Chapter 46 Section 19-2	First day to file an application for an absentee ballot.
28	Chapter 122 Section 9-3	Voters must be registered and must have lived in the school district for 28 days prior to the election.
22	Chapter 122 Section 9-10	Last day to file nominating papers.
		Last day to file the receipt for filing the ethics statement.
18	Chapter 122 Section 9-10	Last day for a candidate to file his notice of withdrawal.
12	Chapter 127 Section 604A-105	Last day for a candidate to file a declaration of intention to defer filing a statement of economic interests for 30 days after the due date.
10	Chapter 122 Section 9-8	Ballots must be printed and in the secretary's possession by today, and must be available for inspection by the candidates.
	Chapter 122 Section 9-11	Last day to publish the notice of election.
5	Chapter 46 Sections 19-2 and 20-2	Last day for an absentee voter to deliver his application for an absentee ballot to the secretary by mail.
		Last day for persons in the military service and certain other classes of persons to apply for an absentee ballot.
1	Chapter 46 Section 19-2	Last day for personal delivery of the application for an absentee ballot.
Election Day	Chapter 122 Section 9-5	Absentee ballots must be received by the secretary in time to deliver them to the polls by closing.

Days After The Election	Reference, 1975 Illinois Revised Statutes	The Event
5	Chapter 122 Section 9-16	Last day for judges to deliver the poll book and other election returns to the secretary.
8	Chapter 127 Section 604A-105	Last day to file the statement of economic interests (if the statement of intention to defer filing was filed on time).
10	Chapter 122 Section 9-18	Last day for the board of education to canvass the returns.
15	Chapter 122 Section 9-20	Last day to petition for a discovery recount (assuming that the board of education canvassed the returns on the 10th day after the election).
40	Chapter 46 Section 23-20	Last day to file a petition in circuit court to contest the election (assuming that the board of education canvassed the returns on the 10th day after the election).
6 months	Chapter 122 Section 9-16	Ballots to be destroyed by burning.

About This Book

This is a description of a mythical election of mythical school board members in a mythical district located in a mythical county in Illinois.

The law, however, is not mythical. It is based upon Illinois statutes and court cases. The procedures suggested — those not specifically required by statute — are based upon the practical experiences of many school districts. They are intended to minimize error and confusion in the election process.

This book is divided into four major sections, each of which is addressed to one of the important functionaries in the election process. The largest part is addressed to the secretary of the board of election. It takes him through the mythical election on a chronological basis. The foundation for this portion is the calendar of events in a school election, which appears on page nine. There also are sections addressed to candidates and to the election judges.

The final section is directed to the school attorney. School officials often will rely heavily upon advice from their attorneys, even though they may already have read instructions concerning the election process. Materials that other election officials need not be completely familiar with, such as the law dealing with election contests, is included in the section for school attorneys.

Most of the statutory references in this book are to *The School Code* and *The Election Code.* Where the words *The School Code* are used without further statutory citation, they refer to Chapter 122 of *The 1975 Illinois Revised Statutes.* In the same manner, the words *The Election Code* used alone refer to Chapter 46 of *The 1975 Illinois Revised Statutes.*

Joseph A. Murphy
Chicago, Illinois
January, 1977

The Secretary

1. The Election Process Begins

Assume that you are the secretary of the board of education of School District No. 5 in Mythical County, Illinois. You were elected to the board for the first time last year and, except for that, you haven't had much experience with school elections. Also assume that it's nearing Christmas and that you want to know what you are supposed to do for next spring's election.

First, let's see where you fit into the election procedure. As you read through Article 9 of *The School Code of Illinois*, which governs school elections, you will find several specific duties assigned to you. For example, Section 9-11 of *The School Code* specifically imposes the duty of publishing notice of the election on the secretary. But there is no authority specifically delegated to you for many of the other activities that are required.

The four functionaries in a school election are the board of education, the secretary, the superintendent (or business manager), and the school attorney. The entire process is conducted under the general supervision of the board. The board member generally assigned to manage the election is the secretary. He can either perform all of the tasks himself or (as is the custom) he can ask the superintendent to assist with the details. Frequently, superintendents assign the business manager to work with the secretary during the election process.

Since this is your first year as secretary, you will want to learn all of the steps involved. Where do you start?

A good place to start is by reading Article 9 of *The School Code*. Since it's a typical statute, it's not much fun to read. However, you will at least become familiar with the basic legal requirements. While you are doing this, you might want to jot down the days on which events are to occur and prepare a calendar for the election. We have done this for you. It appears in chart form on page nine. The first 12 chapters of this book will take you through the election process one step at a time.

1.1 Determining the Date of the Election

In order to make a calendar of election events, you have to find out on what date the election will be. Section 9-5 of *The School Code* states that your election must be on the second Saturday in April of each year. This is also true for districts of less than 1,000 population governed by a board of three directors rather than by a seven member board of education. There are, however, two exceptions to the rule that the election is on the second Saturday in April of each year. The first exception applies in a district which decides to elect its board members in odd-numbered years by submitting the proposition to a referendum at one of its even-numbered year elections. If the proposition passes, elections thereafter are held in odd-numbered years.

The second exception is provided in Section 9-5 of *The School Code*: "Subject to the provisions of Section 2-34 of *The Election Code* . . ." That section in *The Election Code* provides in substance that school elections can be changed to the first Tuesday in April to be held along with certain municipal elections and those of townships and park districts. This change is made by school board resolution.

1.2 Applications for Absentee Ballots by Persons in the Military Service

Once you have learned the date for your election, you will find that specific time limits are set forth for certain events. These time limits are described in "days before" and "days after" the election. As you see in the calendar of events, on the 100th day prior to the election, members of the military service and certain other classes of persons may apply for an absentee ballot.

Here's how this event gets into the calendar. Section 9-14 of *The School Code* provides that:

"Any person entitled to vote at any election held under the provisions of this Article may have the right to vote by absentee ballot, in the manner provided in Article 19 of *The Election Code* as far as applicable."

Absentee voting is discussed more fully in Chapter Seven. For the minute, we must look at two different problems to find out more about this first event.

1.3 Applicability of The Election Code and Other Statutes to a School Election

The first problem is the applicability of other statutes. Section 9-2 of *The School Code* states that: "The provisions of *The Election Code* shall not apply to any elections held under this Article unless expressly provided by this Article."

Key Concept One — The Role of the Election Code

In *Scofield v. Board of Education of Community Consolidated School District No. 181*, a taxpayer filed suit to invalidate a school bond referendum. He argued that because *The School Code* did not apply unless specifically stated, *The School Code* section was invalid because it did not establish a minimum voting age for voters nor require that they be citizens. The Illinois Supreme Court said, however, that, notwithstanding the language about *The Election Code* not applying unless specifically made to apply, the minimum age and citizenship requirements contained in *The Election Code* are to be read into the *School Code*.[1]

The Supreme Court ruled two years later in *Zbinden v. Bond County Community Unit School District No. 2* that informalities in procedure in conducting a bond referendum (such as the exchange of duties of precinct officials) were violations of directory provisions only and did not invalidate the election. More importantly, however, the court also said that the provision of *The Election Code* requiring voting booths did not apply because it was not specifically set forth in *The School Code*.[2]

A good example of the application of *The Election Code* to school elections is evident in the rule that school board candidates are required to comply with *The Illinois Campaign Disclosure Act*, even though this is not specifically mentioned in *The School Code*. It is in Article 9 of *The Election Code*, but not in Article 9 of *The School Code*.

[1] Legal citations footnoted throughout this book are listed on pages 81 through 83.

This is an attempt to make school elections independent of the complicated rules written for other types of elections contained in *The Election Code*. For the most part, here is the rule of thumb that you can follow:

If it is specifically stated in The School Code, do it that way, even though it is not the way that it is done for the election of the President of the United States or for commissioners of park districts.

However, you cannot rely on this rule entirely. Keep this in mind:

If The School Code is silent about a point, courts have looked to other parts of The Election Code not specifically mentioned in Article 9 of The School Code and have sometimes applied these parts to school elections. (See Key Concept One — Role of The Election Code.)

Let's look closely at this first event in the election process — the application for absentee ballots by persons in the military service. Here we must not only apply a provision of *The Election Code* that is not specifically mentioned in *The School Code*, but we must also apply another statute not a part of *The Election Code* at all: the statute for computing time.

Article 19 of *The Election Code* contains rules for absentee voting. Section 9-14 of *The School Code* seems to limit the application for absentee voting to Article 19. However, in order to safeguard the voting rights of members of the armed forces and certain other classes of persons who might reasonably be expected to be long distances from their homes on election day, the legislature enacted Article 20 of *The Election Code*. The absentee voting procedure for these persons is similar to that for persons who are permitted to vote absentee ballots under Article 19 of *The Election Code*, except that some of the times are extended and that some of the forms differ. We'll look more deeply into this problem in Chapter Seven.

1.4 Computation of Time

Now, to the second problem — the computation of time. One hundred days from the second Saturday in April falls somewhere around New Year's Day, depending, of course, on the year. In 1976 the election was on April 10. Counting back 100 days from that date brought us to January 1, a holiday. A general rule about computing time

applies when holidays, Saturdays, and Sundays are involved. It is found in Chapter 131 of *The 1975 Illinois Revised Statutes* and is stated as follows:

> "The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last is Saturday or Sunday or is a holiday as defined or fixed in any statute now or hereafter in force in this State, and then it shall be excluded. If the day succeeding such Saturday, Sunday, or holiday is also a holiday or a Saturday or Sunday, then such succeeding day shall also be excluded."[3]

The purpose of the rule is to extend the time past a Saturday, a Sunday, or a holiday. Therefore, counting backwards, if the 100th day lands on January 1, go back one more to December 31.

However, you don't really have to do anything on the 100th day except to receive applications that may come in from persons who are entitled to vote under the procedures contained in Article 20 of *The Election Code.*

The next event, publishing the notice of election, is something that you must take action on, and it's one of the crucial steps in the election process. (See **Key Concept Two — Mandatory vs. Directory Provisions.)**

Key Concept Two — Mandatory vs. Directory Provisions

Although procedures are important, the basic rule in elections is that the procedures should not get in the way of giving (a) the candidates a fair chance of being elected and (b) the voters a fair opportunity to express their opinions about who should be elected. Therefore, a "minor" mistake is often overlooked by the courts if it did not affect the outcome of the election.

Here's an example. In 1965 an election was held in Saline County, Illinois, to decide if the Harrisburg Community Unit School District should be formed. The voters approved its formation, but one of its opponents filed suit to invalidate the election. She said that the polling place selected for one of the precincts did not lie within the precinct boundaries. As a result, she argued, the election was void.

The trial judge said that the location of the polling place did not invalidate the election. The woman appealed in *Gann v. Harrisburg Community Unit School District.* The appellate court agreed with the trial judge and said that some of the provisions of the school election statue are "mandatory" and others are "directory."[4]

The distinction is that, if you don't follow a *mandatory* provision, the election will be invalid; if you don't follow a *directory* provision, the election may not necessarily be invalid. The test is whether the candidates and voters were given the fair chance they should have been given. If they were, then the failure to follow a directory provision will not invalidate the election.

The appellate court examined all of the circumstances in *Gann* and found that the mere fact that the polling place was not within the precinct boundaries did not invalidate the election. But there was this warning in the opinion:

> "This is not to say, however, that a directory provision may or should be disregarded, but only that an entire election will not be invalidated for the failure to follow such a provision."[5]

Another example where the election was not invalidated although the officials failed to follow directory provisions is in *Zbinden v. Bond County Community Unit School District No. 2.*[6]

2. Publication of Notice

2.1 Publication Dates

On the 75th day before the election, the 20-day period begins within which you must publish the notice of the time and place for filing nominating petitions. This requirement is stated in Section 9-10 of *The School Code* as follows: ". . . not more than 30 days nor less than 10 days prior to the first day for filing such petitions."

The crucial point here is that you must give notice. This is apparent from the holding in *People ex rel. Anderson v. Community Unit School District No. 201.* The court in that case invalidated an election to approve the formation of a community unit school district. The court said that the county superintendent of schools could not prove that he had given the required notice of the election. While notice of the election is not the same as the notice stating the time and place for filing nominating petitions, presumably the holding in this case applies to all required notices. [7]

The exact form for the notice stating the time and place for filing nominating petitions is not spelled out in the statute, so any reasonable compliance with the requirement is acceptable. For example, in *Carstens v. Board of Education of East Alton - Wood River Community High School District*, a taxpayer sought to prevent the sale of school building bonds because, among other things, he said that the notice of the election did not specify the exact location of the proposed school. The court held that the notice was a "fair portrayal of the chief features of the proposition in words of plain meaning" and that it reasonably complied with the statute. [8]

2.2 Authorizing Publication of the Filing Notice

As with every other step you will take in the election process, it is a good idea for the board to adopt a resolution authorizing the publication of this notice. There is no specific statutory requirement for such a resolution, but it serves at least two useful purposes. First, it provides the formal authority to spend the money to publish the notice, and second, it is additional evidence for the election record. (See **Key Concept Three — The Election Record.**)

For our mythical election, assume that one of the board members was transferred by his employer to San Francisco. A vacancy therefore has been created on the board, as provided in Section 10-11 of *The School Code.* The board has appointed a member to fill the vacancy, but the seat must be put up for election at the next annual election as required by Section 10-10 of *The School Code.* Also assume that two additional seats must be filled because the terms have expired.

You can see from the calendar of events that the period within which you must publish the notice of the time and place for filing nominating petitions begins on the 75th day before the election. Assume that your board meets on the first Monday of the month and that the *Ourtown Daily News* requires the copy for a legal notice two days in advance of publication. A good time for your board to adopt the resolution authorizing publication of the notice is within the publication period, but sufficiently in advance to allow for the mechanics of setting the type and checking the proof before publication. A form for this resolution is suggested in **Form One,** on page 15.

The resolution in **Form One** contains references to a statement of economic interests which is required by Chapter 127, Section 604 A (g) of *The 1975 Illinois Revised Statutes.* Another reference is to *The Illinois Campaign Disclosures Act* that has been incorporated into Article 9 of *The Election Code.* We'll discuss these later.

Note that Section 5 of the resolution contains the legal notice that you are to publish. To save time, when you prepare the resolution, type Section 5 on a separate page. Then it can be copied easily and sent to the newspapers. However, don't pull the notice out of the original resolution that

Key Concept Three — The Election Record

The election record is a separate file that the secretary should keep to document every step in the election process. If you ever confront an election challenge in court, the election record will have the essential pieces of evidence that will be required. In one case, the election to form a community unit school district was held invalid because there was no record of the proceedings to form it, including the election itself.[9]

There is one other good reason for keeping the election record. Doing so makes your job easier in subsequent elections because you have a complete set of forms to help you.

you are going to keep in the election record because the resolution must appear in the record in full.

The notice in **Form One** meets the minimum statutory requirements in that it states the place for filing and the legally required hours that you must keep your office open to receive nominating petitions. If you don't normally open the administrative offices until 9:00 a.m. or usually close before 4:30 p.m., you must make arrangements during the period in which nominating papers can be filed to have the office open from 8:30 a.m. to 4:00 p.m. Either you or your designated representative must be present during that time. This doesn't mean that you must be there every minute of that time. The critical periods occur on the morning of the first day and the afternoon of the last day. You must be precisely on time both of these days because some candidates want to be the first on the ballot and some want to be last. The order in which they appear on the ballot is the order in which they file their petitions. This is prescribed in Section 9-10 of *The School Code*. In between the first and last day, either you or your designated representative can be absent for short periods dur-

FORM ONE — Resolution Authorizing Publication of the Notice of the Time and Place for Filing Nominating Petitions

Board of Education of School District No. 5
Mythical County, Illinois

Resolution designating place for filing nominating petitions; designating secretary's representative and authorizing publication of notice concerning filing of nominating petitions for the annual election for members of the Board of Education to be held on April _____, 19_____.

WHEREAS, pursuant to the terms of Section 9-5 (a) of The School Code (Chapter 122, Sec. 9-5 (a), Illinois Revised Statutes, 1975) an election is to be held in School District No. 5, Mythical County, Illinois, for the election of two members of such Board; and

WHEREAS, pursuant to the provision of Section 10-11 of The School Code, a vacancy has been created on such Board by the resignation of Member Peter Ford and Section 10-10 of The School Code requires that said vacancy be filled for the two-year unexpired term of Member Peter Ford at the next annual election; and,

WHEREAS, Section 9-10 of The School Code provides that nominating petitions, statements of candidacy, and receipts evidencing the filing of economic interests are to be filed by candidates for such offices with the Secretary of the Board, or his designated representative, not earlier than 45 and not less than 22 days prior to the election; and,

WHEREAS, Section 9-10 of The School Code requires that notice setting forth the time and place for filing nominating petitions and accompanying documents is to be published at least once in a newspaper published in the District, not more than 30 nor less than 10 days prior to the first day for filing nominating petitions and accompanying documents; and,

WHEREAS, the Secretary of the Board has heretofore designated Mr. Fred Killian, the Business Manager of School District No. 5, as his representative to receive and file such nominating petitions;

NOW, THEREFORE, be it resolved by the Board of Education of School District No. 5, Mythical County, Illinois, as follows:

Section 1: The place for receiving and filing nominating petitions and accompanying documents for the election to be held on April _____, 197__, is hereby designated as Room 107, Lincoln School, 605 West Grand Avenue, Ourtown, Illinois.

Section 2: Pursuant to the appointment by the Secretary as aforesaid, Mr. Fred Killian, the Business Manager of School District No. 5, is designated as the representative of the Secretary for the purpose of receiving and filing such nominating petitions and accompanying documents.

Section 3: The hours the administrative office of the District will be open for the receiving and filing of nominating petitions and accompanying documents will be between 8:30 a.m. and 4:00 p.m., Mondays through Fridays, except school holidays, beginning on February _____, 197__, and ending on March _____, 197__.

Section 4: The procedure to be used by the Secretary (or his designated representative) for the receipt and filing of nominating petitions and accompanying documents is to be substantially as follows:

(1) The Secretary will receive such nominating petitions and accompanying documents in the order presented and will mark upon such petitions the date and hour received and the numerical sequence in which they were received.

(2) The Secretary will, at the time such petitions are received, notify the candidate named thereon, or the agent who files the nominating petition for such candidate, of the candidate's obligation to file statements of organization, reports of campaign contributions, and annual reports of campaign contributions and expenditures as required by The Illinois Campaign Disclosures Act.

(3) The Secretary will thereafter, as conveniently as may be, examine such nominating petitions and accompanying documents as to form and content, and if the same are in apparent conformity with the requirements of Section 9-10 of The School Code, the Secretary will file such petitions in the Secretary's office in the order received. The Secretary will thereafter, within 7 days of such filing (or on the last day of filing, whichever is earlier) acknowledge to the candidate in writing the receipt of such nominating petitions and accompanying documents. Such acknowledgment may be sent by mail to the candidate's address as it appears on the state-

continued next page

ing the day, as long as you give the candidates a fair chance to file.

2.3 Receiving Nominating Papers

It may seem that both the resolution and the notice are too detailed when they describe the procedure to be followed by the secretary or his designated representative for receiving and filing petitions and accompanying documents. You might think that any reasonable office procedure would be acceptable. However, school elections often become hotly contested and emotional events. Because Section 9-10 of *The School Code* requires that candidates' names appear on the ballot in the order in which their petitions are filed, and since some candidates want to be either first or last on the ballot, we suggest that you develop a precise administrative procedure and that you describe it in detail in the notice designating the time and place for filing nominating petitions. Doing so can help you avoid many problems and can provide answers to candidates' questions with little difficulty.

Before you handle a mailed nominating peti-

Form One continued

ment of candidacy.

(4) Nominating petitions and accompanying documents may be filed either by the candidate or by another person on the candidate's behalf. More than one nominating petition may be filed by the same person on behalf of one or more candidates. If one person desires to file more than one nominating petition, he shall present them one at a time and they will be received in the order presented.

(5) Nominating petitions and accompanying documents may be mailed to the place for filing, provided that the envelope or envelopes containing them has the following legend conspicuously marked on the front: "Nominating Petition and Accompanying Documents Enclosed." Mail is received in the School District's administrative office at approximately 10:15 a.m. daily, Monday through Friday. The mail then is delivered by the School District's staff to each department, including the office designated as the place for filing nominating petitions and accompanying documents. Mailed petitions will be considered as having been received by the Secretary or his designated representative when such mail is delivered in Room 107 in the Lincoln School in the normal course of such business day by the School District's staff. Such nominating petitions will be filed in the numerical order in which the envelopes containing them are opened by the Secretary or his designated representative. In the event such envelopes have been opened prior to the delivery to the Secretary or his designated representative, such nominating petitions will be filed in the numerical order in which the Secretary or his designated representative processes them at the time of delivery of mailed petitions to the Secretary or his designated representative. The Secretary or his designated representative will complete the receipt of any nominating petition from a person present at the designated place for filing when, in the opinion of the Secretary or his designated representative, such person had begun the presentation of a petition. Upon receipt of that petition and prior to the receipt of any other petition from any person present at, or in the vicinity of, the place designated for filing nominating petitions, the Secretary or his designated representative then will begin processing nominating petitions received in the mail.

(6) Any disputes concerning the order in which petitions are received or filed or concerning whether or not any petition is in apparent conformity with the provisions of Section 9-10 of The School Code shall be resolved by the Secretary (or his designated representative if the Secretary is not present at the time such dispute arises, except that the designated representative may refer any such dispute to the Secretary for resolution).

Section 5: The Secretary is authorized and directed to publish notice concerning the filing of nominating petitions of such election at least once in the *Ourtown Daily News*, being a newspaper published within School District No. 5. Such notice shall be in substantially the following form:

Board of Education of School District No. 5
Mythical County, Illinois

Notice of Time and Place for Filing Nominating Petitions

Please take notice, that petitions nominating candidates as Members of the Board of Education of School District No. 5, Mythical County, Illinois, in the election to be held in such District on April ____, 197__, must be received and filed with the Secretary of such Board of Education, or his designated representative, between the hours of 8:30 a.m. and 4:00 p.m. in the Administrative Office of the School District, Room 107, Lincoln School, 605 West Grand Avenue, Ourtown, Mythical County, Illinois.

The first day for filing such nominating petitions is February _____, 197__ and the last day for such filing is March ____, 197__.

Petitions filed with any other person than the Secretary or his designated representative are invalid. The Secretary has designated Mr. Fred Killian, Business Manager of the School District, as his representative for the purposes of filing and receiving nominating petitions. Mr. Killian's office is in Room 107, Lincoln School, 605 West Grand Avenue, Ourtown, Mythical County, Illinois.

Nominating papers are not valid unless the candidate named therein files with the Secretary of the Board of Education a receipt from the County Clerk of Mythical County, Illinois, showing that the candidate has filed a statement of economic interests as required by The Illinois Governmental Ethics Act in relation to School District No. 5 within the period for filing nominating petitions or within a year preceding the date on which nominating papers were filed. Such receipt shall be so filed not later than the last day on which nominating petitions may be filed.

The procedure to be used by the Secretary (or his designated representative) for the receipt and filing of nominating petitions and accompanying documents is to

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continued next page

tion it is important that you understand the legal interpretations of the words *received* and *filed*. In a dispute, *receipt* must be defined as the physical act of placing the nominating petitions and accompanying documents in the hand of the secretary or his designated representative. That act is then memorialized by the secretary or his designated representative by writing across the upper right hand corner of the nominating petition the date and exact time of actual receipt and a number indicating the numerical order in which the document was placed into his hand. This second act, that of writing on the petitions, is the *filing*.

2.4 Conformity of Petitions

Section 9-10 of *The School Code* says: "When petitions are in apparent conformity with the requirements of this section, they must be received and filed with the secretary of the board of education or his designated representative . . ." It also says: "The secretary shall within seven days of filing or on the last day for filing, whichever is earlier, acknowledge to the petitoner in writing his acceptance of the petition."

In order for a nominating petition to be in "apparent conformity," we think that, as a minimum, all of the following questions must be answered "yes:"

1) Is the nominating petition substantially in the form set out in Section 9-10 of *The School Code*? (See **Form Six** on page 26.)

2) Is a statement of candidacy attached? Is it in substantially the same form as that contained in Section 9-10 of *The School Code*? (See **Form Seven** on page 26.)

3) Does the nominating petition contain the signatures of at least 50 voters or 10 percent of the voters, whichever is less, who reside within the school district?

4) Does the nominating petition indicate whether the candidate is running for a full term or a vacancy?

5) Does the petition contain the statement of the circulator that he saw the signatures placed on it and that he knew that the persons who signed not only signed their own names but were also qualified voters?

6) Is the circulator's signature notarized?

7) Has the candidate filed a receipt from the county clerk showing that he has filed a statement of economic interests as required by *The Illinois Govermental Ethics Act*?

Clearly, there are numerous things that you

Form One continued

be substantially as follows:

(1) The Secretary will receive such nominating petitions and accompanying documents in the order presented and will mark upon such petitions the date and hour received and the numerical sequence in which they were received.

(2) The Secretary will, at the time such petitions are received, notify the candidate named thereon, or the agent who files the nominating petition for such candidate, of the candidate's obligation to file statements of organization, reports of campaign contributions, and annual reports of campaign contributions and expenditures as required by The Illinois Campaign Disclosures Act.

(3) The Secretary will thereafter, as conveniently as may be, examine such nominating petitions and accompanying documents as to form and content, and if the same are in apparent conformity with the requirements of Section 9-10 of The School Code, the Secretary will file such petitions in the Secretary's office in the order received. The Secretary will thereafter, within 7 days of such filing (or on the last day of filing, whichever is earlier), acknowledge to the candidate in writing the receipt of such nominating petitions and accompanying documents. Such acknowledgement may be sent by mail to the candidate's address as it appears on the statement of candidacy.

(4) Nominating petitions and accompanying documents may be filed either by the candidate or by another person on the candidate's behalf. More than one nominating petition may be filed by the same person on behalf of one or more candidates. If one person desires to file more than one nominating petition, he shall present them one at a time and they will be received in the order presented.

(5) Nominating petitions and accompanying documents may be mailed to the place for filing, provided that the envelope or envelopes containing them has the following legend conspicuously marked on the front: "Nominating Petition and Accompanying Documents Enclosed." Mail is received in the School District's administrative office at approximately 10:15 a.m. daily, Monday through Friday. The mail is then delivered by the School District's staff to each department, including the office designated as the place for filing nominating petitions and accompanying documents. Mailed petitions will be considered as having been received by the Secretary or his designated representative when such mail is delivered to Room 107 in the Lincoln School in the normal course of such business day by the School District's staff. Such nominating petitions will be filed in the numerical order in which the envelopes containing them are opened by the Secretary or his designated representative. In the event such envelopes have been opened prior to the delivery to the Secretary or his designated representative, such nominating petitions will be filed in the numerical order in which the Secretary or his designated repre-

continued next page

check before you can conclude that the nominating petition has been accepted, as provided in Section 9-10 of *The School Code*.

The ultimate decision about whether a candidate will appear on the ballot is really made by only two people, neither of whom is the candidate. The secretary must make the initial decision about whether the nominating petition and accompanying documents are in "apparent conformity" with the requirements of Section 9-10 of *The School Code*. Obviously, this must be a rational decision, and it's probably better that any "close calls" be resolved in favor of the candidate.

However, if there is some patent error (for example, if you know that 25 of the 50 signatures are those of persons who do not live in the district), then you have the responsibility not to accept the nominating petition. **If you have any questions at all about the apparent conformity of a nominating petition, ask your school attorney for advice.**

The second person who decides about whether the candidate will be on the ballot is a circuit court judge. He would be called on to decide only if you had ruled the nominating petition invalid and the candidate filed suit challenging your decision. The candidate would ask the court to direct you, by writ of mandamus, to accept the petition and place his name on the ballot.

Remember, it is fundamental that you dissociate yourself from local pressure about candidates or the state of school affairs when you make your decision about the validity of a nominating petition.

2.5 Appointing a Designated Representative

Section 9-10 of *The School Code* says that petitions must be filed with the secretary or his designated representative in order to be valid. It is a good practice for you to name someone as that designated representative. In our example, we have chosen the mythical business manager because he is more likely to be available at school during those hours on the days on which nominating petitions can be filed.

You should address a letter to whomever you select as your designated representative, notifying him of his appointment. Verbal notification may be all that the business manager would need from you to do the work, but remember that you're building a record of the election, too, so you should make this designation formally and put the original letter in the election record.

2.6 Forms Available for Candidates

The notice also informs potential candidates that you have nominating petitions and statements of candidacy available for them if they want to use them. You are required to supply the forms as stated in Section 9-10 of *The School Code*. Inci-

Form One continued

sentative processes them at the time of delivery of mailed petitions to the Secretary or his designated representative. The Secretary or his designated representative will complete the receipt of any nominating petition from a person present at the designated place for filing when, in the opinion of the Secretary or his designated representative, such person had begun the presentation of a petition. Upon receipt of that petition, and prior to the receipt of any other petition from any person present at, or in the vicinity of, the place designated for filing nominating petitions, the Secretary or his designated representative then will begin processing nominating petitions received in the mail.

(6) Any dispute concerning the order in which petitions are received or filed or concerning whether or not any petition is in apparent conformity with the provisions of Section 9-10 of The School Code shall be resolved by the Secretary (or his designated representative if the Secretary is not present at the time such dispute arises, except that the designated representative may refer any such dispute to the Secretary for resolution).

Forms for nominating petitions and statements of candidacy may be obtained from the Secretary of the Board of Education, or the Business Manager of the School District, in Room 107 of the Lincoln School.

Dated, at Ourtown, Mythical County, Illinois, this ____ day of February, 197__.

/s/ Robert Williams
Robert Williams, Secretary
Board of Education of School District No. 5
Mythical County, Illinois

Section 6: This resolution shall become effective from and after its adoption as provided by law.

Adopted this ____ day of February, 197__.

Ayes: Daniels
Johnson
Cavendish
Williams
Mitgleider
Barton

Nays: None

Absent: Carlton

/s/ Robert Daniels
Robert Daniels, President
Board of Education of School District No. 5
Mythical County, Illinois

(SEAL)

Attest:

/s/ Robert Williams
Robert Williams, Secretary
Board of Education of School District No. 5
Mythical County, Illinois

dentally, a candidate need not use the forms you supply. He can provide his own, but they must comply with the requirements of the statute in order to be acceptable.

2.7 Publication of the Notice

The notice must be published at least once in a newspaper published in the school district. The word "published" is troublesome. One Illinois case held that it means where the newspaper is first issued to the public, not where the printing is done. [10] Another case held that it is the general local nature of the newspaper that is conclusive.[11] Whether your newspaper is "published within the district" is something that you should check with your school attorney. You also should determine whether your newspaper, even though it may be published in the district, is one that qualifies for legal notices. The rules for this qualification are specific and are set out in Chapter 100, Section 5, of *The 1975 Illinois Revised Statutes.*

However, assume that the *Ourtown Daily News* is a daily paper of general public interest that has its editorial and printing offices in the village. It distributes copies to home delivery boys at the printing office. It has been published for many years and is widely read in the community. The chances are that it is not only "published in the district" but is also a newspaper qualified to print legal notices. Assume that your attorney advises you that you can publish in that newspaper.

Now change the facts a little bit. Assume that Ourtown doesn't have a paper, but a paper like the one just described is located in Hillcrest, 25 miles away, and outside of the school district. But it is widely read throughout the district. Section 9-10 of *The School Code* will permit you to publish in that newspaper because you do not have one "published in the district."

What if you don't have either one of the newspapers described? You then can "publish" this notice by posting copies of it in 10 prominent places in the district. You can do this by tacking the notice to trees in the downtown square and by putting it on the bulletin board in the courthouse and the school district offices, for example.

The chances are that you will have a newspaper that meets the requirements. When you place your order for publication of this legal notice, tell the publisher that you will need his affidavit of publication. He then will provide you with an exact replica of the notice as it appeared in the paper. He will attach the notice to his sworn statement in which he says that his newspaper qualifies as one in which the notice can appear and also states the dates on which the notice was published. (See Form Two.) This goes into the election record.

FORM TWO — The Affidavit of Publication

STATE OF ILLINOIS)
) SS
COUNTY OF MYTHICAL)

AFFIDAVIT OF PUBLICATION

Howard Blackstone, being first duly sworn on oath, deposes and says that he is the President of the Lakeland Publishing Company, an Illinois corporation, and that such company publishes the Ourtown Daily News, a secular newspaper of general circulation published daily in the Village of Ourtown, Mythical County, Illinois, and distributed in Mythical County and seven nearby counties; and, further, that said paper has been regularly published in Mythical County, Illinois, continuously for more than a year prior to the first publication of the annexed notice; and, further, that it is a newspaper as defined in "an Act to revise the law in relation to notices" as amended by an Act approved July 17, 1959 (Chapter 100, Sections 1 and 5, Illinois Revised Statutes, 1975) and is authorized by law as a proper medium for the publication of legal notices in Mythical County, Illinois; and

Further says that attached to this Affidavit of Publication is a true copy of a notice that was published in the Ourtown Daily News _____ time(s) on _____

_____

(Insert copy of notice here cut out of the newspaper edition in which it was published.)

Dated, at Ourtown, Illinois, this _____ day of _____

Lakeland Publishing Company, an Illinois corporation,
BY: _____
Howard Blackstone, President

(Notarial Seal)

SUBSCRIBED AND SWORN TO
before me this _____ day of February, 197___.

_____
Notary Public

3. Calling the Election

3.1 The Resolution Calling the Election

Although there is no statutory time for the next event in the calendar, the adoption of the resolution calling the election, we recommend that it be done about 60 days prior to the election. This allows adequate time to publish the election notice no later than 10 days before the election, as required by Article 9-11 of *The School Code*. By the same token, it allows ample time to complete the necessary preparations leading up to the resolution.

You will note (see **Form Three**) that the notice of election is included in the resolution. Publication of this notice should follow the same procedures set forth for publishing the notice of time and place for filing nominating petitions (see **Chapter Two — Publication of Notice**). It is important, for example, to obtain an affidavit of publication from the publisher (see **Form Two**).

Here are some important things to remember about the resolution calling the election:

1) The first two statements beginning with "whereas" are repetitions of the statements made in the first resolution which the board adopted (see

FORM THREE — Resolution Calling the Election

Board of Education of School District No. 5
Mythical County, Illinois

Resolution Calling the Annual Election for
Members of the Board of Education
of School District No. 5,
Mythical County, Illinois

WHEREAS, the terms of office of two Members of the Board of Education of School District No. 5, Mythical County, Illinois, are about to expire, and a vacancy in the office of one Member has been created by the resignation of the incumbent and his removal from the District, leaving an unexpired term of two years; and

WHEREAS, pursuant to the provisions of Section 9-5 (a) of The School Code (Chapter 122, Section 9-5 (a) Illinois Revised Statutes, 1975), the annual election for Members of the Board of Education is to be held on Saturday, April ____, 197__, at which time two Members are to be elected for full terms of three years each, and one Member to fill an unexpired term of two years; and

WHEREAS, Section 9-8 of The School Code requires the Board of Education to appoint three or more Judges of Election for each precinct for such election, which Judges shall be of fair character, of proved integrity, and well-informed persons who can read, write, and speak the English language and who have resided in the area constituting the voting precinct for at least one year next preceding the election, and are entitled to vote therein at such election, and who are neither Members of such Board of Education nor are candidates for such office in such election; and

WHEREAS, the Board of Education has heretofore been notified that the precincts for the election called hereby are coterminous with precincts established by the Board of Education of High School District No. 72, Mythical County, Illinois, for the election of Members of such High School Board also to be held on April ____, 197__, and further that such High School Board of Education has indicated its desire that this Board of Education share with it the polling places and Judges of such elections, and it is the desire of this Board of Education that both Boards share such Judges and polling places, and also pay the proportionate share of the amount paid to compensate such Judges;

NOW, THEREFORE, be it resolved by the Board of Education of School District No. 5, Mythical County, Illinois, as follows:

Section 1: For the purpose of electing two Members of the Board of Education for full terms of three years each, and one Member to fill an unexpired term of two years, a regular election is hereby called to be held in said District on Saturday, April ____, 197__.

Section 2: For the purpose of said election, this District is hereby divided into four voting precincts, the boundaries of which and polling places for which are as set forth in Section 4 of this resolution.

Section 3: The polls of said election shall be opened at the hour of 10 a.m. and shall remain open until 8 p.m. on the aforesaid election day.

Section 4: Notice of said election shall be given by the Secretary of the Board of Education by publication once in the Ourtown Daily News, the same being a newspaper published in and having a general circulation in School District No. 5. Such publication shall be at least 10 days before the date set for such election and shall be in substantially the following form:

Notice of Election of Members of the Board of Education
of School District No. 5, Mythical County, Illinois,
to be Held on April ____, 197__

Please take notice that on Saturday, April ____, 197__, at the places hereinafter named in School District No. 5, Mythical County, Illinois, an election will be held for the purpose of electing two Members of the Board of Education of such School District for full terms of three years each, and one Member of such Board of Education to fill an unexpired term of two years.

For the purpose of this election, the following precincts and polling places have been established by said Board of Education:

Precinct No. 1

All that part of School District No. 5, Mythical County, Illinois, lying North of Illinois State Highway No. 42, and

continued next page

Form One). You are stating simply that you must elect some board members and that the election is going to be on April —, 197—.

2) **The third "whereas"** says that you must appoint three judges of election for each precinct. Actually, Section 9-8 of *The School Code* says that you can have more than three judges. If you think that there will be an exceptionally high voter turnout, it might be wise to appoint more than three for each precinct. You need not have the same number of judges in each precinct (provided that you have at least three in each). However, don't appoint more than three for the purpose of permitting the judges to "break up the day" by going out to the store or going home early. All judges must report at least one half hour before the polls open, and they all must stay at the polls until the vote is canvassed and the returns made to you at

Form Three continued

West of Constitution Avenue in the Village of Ourtown.

Polling Place: Washington School
783 North Sixteenth Street
Ourtown, Illinois

Precinct No. 2

All that part of School District No. 5, Mythical County, Illinois, lying East of Constitution Avenue in the Village of Ourtown, and North of Illinois State Highway No. 42.

Polling Place: Lincoln School
605 West Grand Avenue
Ourtown, Illinois

Precinct No. 3

All that part of School District No. 5, Mythical County, Illinois, lying South of Illinois State Highway No. 42, and East of Constitution Avenue in the Village of Ourtown, and the Ourtown-Hillcrest County Road extended South of Constitution Avenue, South of the Village of Ourtown.

Polling Place: South Mythical County Fire Protection District Fire Station No. 2
Intersection of Illinois State Highways 8 and 60, Mythical County, Illinois

Precinct No. 4

All that part of School District No. 5, Mythical County, Illinois, lying South of Illinois State Highway No. 42, and West of Constitution Avenue in the Village of Ourtown, and the Ourtown-Hillcrest County Road extended South of Constitution Avenue, South of the Village of Ourtown.

Polling Place: Truman High School
57 East Maple Street
Centerville, Illinois

The polls will be open at 10 a.m. and will be closed at 8 p.m. on the same day.

By order of the Board of Education of School District No. 5, Mythical County, Illinois.

Dated this _____ day of March, 197__.

Robert Daniels, President
Robert Williams, Secretary

Section 5: The following persons are appointed Judges of Election in School District No. 5 precincts set opposite their names:

Precinct No. 1:	Precinct No. 2:
Harold Farley	Jose Montana
Marian Grimes	Charlotte Ruse
Charles Burman	Vera Kingsley
Precinct No. 3:	**Precinct No. 4:**
Joseph Washington	George Chan
Donald Mankowitz	Otto Tischmann
Kathleen Farrell	Pauline Henderson

Section 6: Pursuant to the terms of Section 9-8 of The School Code, the Judges appointed in Section 5 hereof shall be shared with and shall act as Judges of Election simultaneously for the election to be conducted on April _____, 197__, by the Board of Education of High School District No. 72. The Secretary of the Board of Education of School District No. 5 shall notify the persons named in Section 5 hereof of their appointment as Judges of Election for the Board of Education of School District No. 5.

Section 7: The Judges of Election appointed in Section 5 hereof shall each be paid a total of $50.00 for services performed as such Judges. Of such total, the Board of Education of School District No. 5 shall pay $25.00 and the Board of Education of High School District No. 72 shall pay $25.00. Payment shall be made by the Secretary of School District No. 5 upon the delivery to him of such Judges of the ballots, tally sheets, canvass certificates, and other election materials following the canvass of results in each precinct by such Judges, and upon presentation to such Secretary by such Judges of a statement therefor.

Section 8: The affidavits to vote required by Section 9-9 of The School Code shall be numbered and used by the Judges of Election in lieu of the poll list and poll book provided for in Section 9-14 of The School Code. The Judges of Election shall, previous to any vote being taken, severally subscribe to and take oath or affirmation as is provided for in Section 9-8 of The School Code on separate blanks. After the election such affidavits to vote and Judges' oaths or affirmations shall be filed in the same manner as is required for deposit of the poll book under Section 9-16 of The School Code.

Adopted this _____ day of March 197__.

Ayes: Daniels, Johnson, Cavendish, Williams, Mitgleider, Barton, Carlton

Nays: None

Absent: None

/s/ Robert Daniels
Robert Daniels, President
Board of Education of School District No. 5
Mythical County, Illinois

(SEAL)

Attest:

/s/ Robert Williams
Robert Williams, Secretary
Board of Education of School District No. 5
Mythical County, Illinois

the end of the evening. (This doesn't prevent a judge from stepping down the hall for a few minutes from time to time on election day, but the absences must be brief and for good reason.)

3) **The qualifications** for a judge also are recited in the third "whereas" clause; they parrot Section 9-8 of *The School Code*. It's not likely that you will have trouble finding persons who will meet the "fair character," "proved integrity," "well-informed," and "read, write, and speak the English language" requirements. But you may have trouble finding someone who has resided in the precinct for the last year and is entitled to vote at this school election (that means registered to vote from an address located within the precinct). You can't go over into another precinct and pick up a volunteer to fill a judge's spot in a precinct in which you're having trouble finding someone to serve. This is one of the ways in which a school election differs from one conducted under *The Election Code*. The judge *must* have lived in the precinct for the last year and be registered to vote from an address in it.

The final requirements are self-explanatory. A judge can't be a school board member or a candidate in the election. There is nothing preventing the spouse of a school board member or a candidate from being a judge. But there could be a feeling of impropriety if the spouse is appointed, and it's probably wiser not to do so.

Assume that you're having trouble finding judges. It's not really necessary that they be named in the resolution calling the election. We've done it this way to get you started rounding up your judges early. But, if you can't fill all the spots 60 days before the election, you can withhold from the resolution all references to appointment of judges and adopt another resolution later when you know the names. A form for the later resolution is shown in **Form Four.**

The resolution appointing judges of election should be adopted as soon as you have confirmed the list of judges. It must be adopted prior to the election.

FORM FOUR —
Resolution Appointing Judges of Election

Board of Education of School District No. 5
Mythical County, Illinois

Resolution Appointing Judges of Election
for Election to be Held on April _____, 197___.

WHEREAS, heretofore on March _____, 197___, the Board of Education of School District No. 5, Mythical County, Illinois, adopted a resolution calling the annual election for Members of such Board to be held on April _____, 197___; and

WHEREAS, Section 9-8 of The School Code requires the Board of Education to appoint three or more Judges of Election for each precinct for such election, which Judges shall be of fair character, of proved integrity, and well-informed persons who can read, write, and speak the English language and who have resided in the area constituting the voting precinct for at least one year next preceding the election, and are entitled to vote therein at such election, and who are neither Members of such Board of Education nor are candidates for such office in such election; and

WHEREAS, it is now necessary and desirable that such Judges of Election be appointed;

NOW, THEREFORE, be it resolved by the Board of Education of School District No. 5, Mythical County, Illinois, as follows:

Section 1: The following persons are appointed Judges of Election in School District No. 5 precincts set opposite their names for the election to be held in such District on April _____, 197___:

Precinct No. 1: Harold Farley
Marian Grimes
Charles Burman

Precinct No. 2: Jose Montana
Charlotte Ruse
Vera Kingsley

Precinct No. 3: Joseph Washington
Donald Mankowitz
Kathleen Farrell

Precinct No. 4: George Chan
Otto Tischmann
Pauline Henderson

Section 2: The Secretary of the Board of Education is hereby authorized and directed to notify each such Judge of Election of his appointment.

Adopted this _____ day of March, 197___.

Ayes: Daniels
Johnson
Cavendish
Williams
Mitgleider
Barton
Carlton

Nays: None

Absent: None

/s/ Robert Daniels
Robert Daniels, President
Board of Education of School District No. 5,
Mythical County, Illinois

(SEAL)

Attest:

/s/ Robert Williams
Robert Williams, Secretary
Board of Education of School District No. 5,
Mythical County, Illinois

3.2 Substitute Judges of Election

We've discussed the possibility that you may have trouble convincing people who qualify to act as judges. But what happens on election day if one of those you have convinced is not able to get to the polls? Section 9-8 of *The School Code* says that, on the morning of election day, if one of the judges doesn't appear (or refuses to serve), the other judges can appoint "some other qualified elector" to fill the vacancy. Section 9-8 also says that, if the voters show up, but no judges do, then the voters who are present when the polls are to open can appoint the judges from "their number."

Cases with "one judge absent" arise occasionally; cases with "no judges present" are rare. But, if either does happen, make sure that you have a detailed file memorandum of the incident, because you'll have to recite all of these facts in the board resolution declaring the results of the election so that there is a complete history of all of the jurisdictional facts in the event that there is a court contest of the election.

Note, too, that the resolution says that you must notify the judges of their appointment. One of the best ways to do this is to plan to conduct a school for the judges. You should send each judge a letter in which you state that he has been appointed and also invite him to attend the judges' school. At the school, your school attorney, or another qualified person familiar with the duties and responsibilities of election judges, should go through a step-by-step explanation of what a judge does. Even persons who have been election judges for many years should attend the school. They may know exactly what to do, but they also may not. It certainly is worthwhile to conduct a training session before each election to refresh the minds of those who have been judges before and to educate those who have not.

3.3 Sharing Polling Places and Judges

The fourth "whereas" clause in the resolution calling the election (Form Three) deals with sharing the cost of compensating judges and comes from the authority contained in Section 9-8.1 of *The School Code*. Before we get into that, a little background information may be useful.

In our mythical example, we have been talking about the election to be held on April —, 197—. In fact, there is more than one election to be held that day in the same territory: one for your elementary district, one for the overlaying high school district, and one for the overlaying community college district. Each election is a separate election run by a separate board. Each may even have separate precincts, polling places, and election judges. Mr. and Mrs. Ralph Brown, who live at 1732 Bluff Court in Ourtown, might have to go to three different polling places on election day if they want to vote in all three elections.

Section 9-8.1 of *The School Code* and Section 3-7.8 of *The Public Community College Act*, Chapter 122, Section 103-7.8, of *The Illinois Revised Statutes*, are attempts to overcome this confusion. Unfortunately, these two statutes are not entirely clear.

Section 9-8.1 of *The School Code* says: "When the voting precincts established under this Article for a high school district and for an elementary district are coterminous . . ." Does this mean *all* of the precincts? It seems to say that, but that would mean that the high school district must have the same geographic boundaries as the elementary district. This usually is not the case. We think that the statement means that, when a high school precinct is coterminous with an elementary precinct, then sharing can result, even though the overall boundaries of the two districts are not the same.

Section 3-7.8 of *The Public Community College Act* is somewhat different. It says:

> "In the event that a community college district and any school district, the territory of which is entirely within the boundaries of such community college (district), have elections on the same day, such districts may by agreement have the same polling places and the same election officials. The cost of holding such elections may be apportioned between the districts in accordance with the agreement made by them."

Key Concept Four —
The Compensation of Judges

There is no provision in *The School Code* that fixes the amount you must pay to election judges. There is such a provision in *The Election Code* in Section 13-10. This provision fixes the compensation of election judges, depending upon whether they serve in Cook County, whether they have attended a judges' training school, and so forth. The required compensation ranges from $25 a day and more.

Since Section 13-10 of *The Election Code* is not entirely applicable, and since *The School Code* is silent on this point, we think that you can pay your election judges whatever your board feels is fair under the circumstances.

This statement is more workable than the first because the community college district is so large that it is likely to encompass the entire elementary district and perhaps even the high school district. But it still does not clarify what would occur when a common school district spills over into a different community college district, even though most of the common school precincts are in the community college district.

We think that you can take a practical approach to these problems. If you can arrange to have common precinct boundaries with at least some of the high school precincts, your board and the high school board can agree to share the compensation of the judges assigned to them, even though you might not be able to do it for all of your precincts and for all of theirs. (See **Key Concept Four — The Compensation of Judges.**)

You must determine whether your district is entirely within a community college district before you can talk to its board about sharing costs. (Note that, because of the differences in the wording of the two statutes, "costs" here are not limited to the amount that you pay judges. They could include rent, if you must pay that.) If you are entirely within the community college district, then all of your precincts must be identical to the community college precincts in order that you comply with Section 3-7.8 of *The Public Community College Act.*

3.4 The Description of Precinct Boundaries

You should also concern yourself with the description of your precinct boundaries. The resolution calling the election (Form Three) describes the precincts as: "All that part of School District No. 5 lying . . . ." The purpose of describing the precincts in the notice of election is to inform the voter where he's supposed to vote. In order to get the description of the precinct boundaries into words, you should start by drawing a map. It may be helpful to publish this map for the voters. There is no requirement that you do so, and, if you do, you still must publish the notice of election describing the boundaries in words. But most voters will respond more quickly to the map than they will to the word description in the notice.

In order to draw the lines on this map, start with the perimeter of your school district. You must know *exactly* where your school boundaries are. You may find in your archives that you not only have the legal description of the district as it was formed, but also have a map showing it. You also should have legal descriptions of all annexations and disconnections since the district's organization. From that, you can draw an accurate map. (If you don't have this information, perhaps your regional superintendent of schools does. He's supposed to keep a map of your boundaries as required in Section 3-14.18 of *The School Code.* You also might find boundary information in the offices of the county officers responsible for collection of taxes.)[12]

Wherever you get the information, you should satisfy yourself that it is correct. Consult your school attorney and a surveyor to make sure that you have up-to-date information. Ask for their assistance in preparing your school boundary map. Once you have a good description of your perimeter, you can draw the boundaries of your precincts.

3.5 The Size of Precincts

Be sure that the precincts are of such size that voters will have a reasonable opportunity to vote without being impeded by long lines, traffic snarls, and delays. The precincts should be substantially equal in population, too. The federal district court invalidated the 1969 election for trustees in the Village of Wilmette because of these problems. In

FORM FIVE — Affidavit to Vote

STATE OF ILLINOIS)
) SS
COUNTY OF MYTHICAL)

NO._____

Board of Education of School District No. 5
Mythical County, Illinois

AFFIDAVIT OF VOTER

Each of the undersigned severally states on oath or affirmation that his or her name and address are correctly shown below; that he or she resides in School District No. 5, Mythical County, Illinois, and is registered and entitled to vote in the general elections from such residence; and that he or she is a qualified voter.

No.	*Voter's Signature*	*Street Address*	*City or Village*
1.			
2.			
3.			

(And so on, for as many signature lines as will fit on the page.)

25. _____

SUBSCRIBED AND SWORN TO before me this ____ day of April, 197__.

_____
Election Judge

that case, *Ury v. Santee*, the Village had been using 32 precincts, but decided to reduce this number to six in order to save money. When a large number of voters turned out that year, havoc resulted at the polling places, and the court found that people had been deprived of their right to vote as a result.[13]

3.6 Hours of Voting

Section 3 of the resolution calling the election states that the opening and closing times for the polling places in our mythical election are to be 10:00 a.m. to 8:00 p.m. These times were selected arbitrarily for our example. The only limitation that you have on times is stated in Section 9-6 of *The School Code*, which provides that the polls must be open before noon and must stay open until at least 7:00 p.m.

You may open polling places before noon and close later than 7 p.m. if your board decides that longer hours will be more convenient for voters. If you share precincts with a high school or a community college, you must open and close the polls in each of your precincts at the same times as the district with which you are sharing.

3.7 Affidavits to Vote and the Poll Book

Section 8 of the resolution calling the election states that you are going to use the affidavit to vote instead of the poll book in your election. Section 9-9 of *The School Code* requires that, when a voter comes into the polling place, he must fill out an affidavit to vote. We have provided an example of the affidavit in **Form Five.** Section 9-14 of *The School Code* requires that one of the election judges then write the voter's name in a poll book to show the chronological order in which he applied to vote.

However, Section 9-14 of *The School Code* gives you an *option of not using the poll book* if you decide to number the voters' affidavits in the order in which the voters apply to vote. You must remember two things if you select this method: (a) This alternate method must be authorized "by resolution" of the "authority calling the election," and (b) if you elect this alternate method the election judges must sign their oaths of office on separate blanks before the vote is taken. We have used this method in our mythical election because it eliminates one of the steps in the process, that of keeping the poll book.

4. Nominating Papers

4.1 The First Day for Filing and the Last

The 45th day before the election is the first day on which candidates can file nominating petitions and the accompanying documents. The 22nd day before the election is the last day on which they can file.

Section 9-10 of *The School Code* provides that the names of candidates must appear on the ballot in the order in which nominating papers are filed. Section 9-10 of *The School Code* sets forth the form for the nominating petition.

In **Section 2.4** we discussed the list of things that you should look for when you are presented with a nominating petition to see if it is in "apparent conformity" with the provisions of Section 9-10 of *The School Code*. Recall that this section imposes a duty on the secretary to supply candidates with the forms for nominating petitions. However, there is no requirement that the candidate use the form that you provide. He may want to type (or even handwrite) his own form. If it contains all the words and other elements required by law, his form is just as legal as the one you provide.

A model nominating petition is shown in **Form Six.** The first of the accompanying documents that must be filed with the nominating petition is the statement of candidacy shown in **Form Seven.**

4.2 The Statement of Economic Interests

Section 9-10 of *The School Code* and *The Illinois Governmental Ethics Act*, Chapter 127, Section 604A-105, *The 1975 Illinois Revised Statutes*, require that a school board candidate file a statement of economic interests. *The Ethics Act* says that he must file this statement with the county clerk; *The School Code* says that he must file a receipt with the secretary showing that he filed with the county clerk. The procedure sounds straightforward, and in most instances candidates will comply so you'll have no trouble.

However, there may be questions: When is the candidate required to file the statement with the county clerk? When is he required to file the receipt with you? And what happens if he doesn't file either statement?

If a candidate does not file the ethics statement at all, he is ineligible for office (if he has not yet been elected) or he forfeits the office (if he has already been elected).[14]

Moreover, Section 9-10 of *The School Code* says that nomination papers are not valid unless the receipt from the county clerk is filed with the secretary.

However, exactly when these documents must be filed is not clear. Here are the possibilities:

1) Perhaps the statement of economic interests must be filed within a year preceding the date on which the candidate files his nominating petition, and the statement must be with respect to your school district (see Section 9-10 of *The School Code* and Section 604A-105(a) of *The Ethics Act*); or

2) Perhaps the ethics statement must be filed prior to presenting the nominating petition to the secretary. This is because Section 9-10 of *The School Code* requires that the statement of candidacy attached to the nominating petition must contain a statement that the candidate already has filed his ethics statement; or

3) Perhaps the ethics statement need not be filed prior to the presentation of the nominating petition to the secretary, but must be filed prior to the last date on which nominating papers can be filed. This is because Section 9-10 of *The School Code* says that the receipt from the county clerk need not be filed until the last day for filing nominating petitions. Section 604A-105(a) of *The Ethics Act* contains a statement leading to the same result. However, both statements seem to conflict with the requirement that the statement of candidacy recite that the ethics statement must already have been filed; or

4) Perhaps the ethics statement need not be filed until 30 days after the last day for filing

FORM SIX — The Nominating Petition

Board of Education of School District No. 5
Mythical County, Illinois

NOMINATING PETITION

TO: The Secretary
Board of Education of
School District No. 5
Mythical County, Illinois

We, the undersigned, being at least 50 inhabitants and voters (or 10 percent of the inhabitants and voters, whichever is less) residing in School District No. 5, Mythical County, Illinois, hereby petition that _____ _____, who resides at _____ _____, in the City or Village of _____, and in the Township of _____, in Mythical County, Illinois, and within School District No. 5, shall be a candidate for the office of Member of the Board of Education of School District No. 5 *for a full term* or *to fill a vacancy* (*strike out one*), to be voted for at the election to be held on the _____ day of April 197___.

	Name	*Address*
1.	_____	_____
2.	_____	_____

(and so on for at least 50 spaces)

50.	_____	_____

STATE OF ILLINOIS)
) SS
COUNTY OF MYTHICAL)

I, _____, hereby certify that I am a voter and reside within School District No. 5, Mythical County, Illinois described in this petition, and that the signatures on this sheet and the _____ sheets attached hereto were signed in my presence and are genuine and that to the best of my knowledge and belief the persons so signing were at the time of signing qualified voters.

_____
Signature of Circulator

SUBSCRIBED AND SWORN to before me this _____ day of _____, 197___.

_____
Notary Public

FORM SEVEN —
The Statement of Candidacy

STATE OF ILLINOIS)
) SS
COUNTY OF MYTHICAL)

STATEMENT OF CANDIDACY

I, _____, being first duly sworn on oath, say that I reside at _____, in the City or Village of _____, Mythical County, Illinois; that I am a qualified voter therein; that I am a candidate for election for the office of Member of the Board of Education of School District No. 5, Mythical County, Illinois, for the _____ term of _____ years, to be voted upon at the election to be held in such District on April _____, 19___; that I am legally qualified to hold such office, that I have filed a statement of economic interests as required by The Illinois Governmental Ethics Act, and that I hereby request that my name be printed upon the official ballot for election to such office.

_____
Signature of Candidate

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 197___.

_____
Notary Public

FORM EIGHT — The Receipt for Nominating Papers

Board of Education of School District No. 5
Mythical County, Illinois

_____ (Date)

_____

_____

_____

Dear Mr. _____:

This is to acknowledge that on _____, 19__ there was filed with the Secretary of the Board of Education of School District No. 5, Mythical County, Illinois, a Petition nominating you for the office of Member of such Board of Education, for a full term of three years (or to fill a vacancy of a term of _____ years), along with your Statement of Candidacy.

(Check applicable paragraph below.)

_____ There was also filed with your Nominating Petition and Statement of Candidacy a receipt from the County Clerk of Mythical County, Illinois, showing that you have filed a Statement of Economic Interests with respect to this Board of Education within the year preceding the date on which the Nominating Petition was filed. Your Nominating Petition and accompanying documents have been examined and have been found to be in apparent conformity with the provisions of Section 9-10 of The School Code (Chapter 122, Section 9-10, Illinois Revised Statutes, 1975). This is to advise you that your Nominating Petition has been accepted.

_____ There was not included with your Nominating Petition and Statement of Candidacy a receipt from the County Clerk of Mythical County, Illinois, showing that you have filed with him a Statement of Economic Interests with respect to this Board of Education within the year preceding the date on which the Nominating Petition was filed. This is to advise you that unless such a receipt is filed with the Secretary of the Board of Education on or before March ____, 19____, which is the last day for filing Nominating Petitions, your Nominating Petition is invalid and cannot be accepted.

_____ In lieu of filing the receipt from the County Clerk of Mythical County referred to in the preceding paragraph, you may file a receipt from the County Clerk of Mythical County showing that you have filed a Declaration of Intention to Defer Filing a Statement of Economic Interests for 30 days past the due date. This Declaration of Intention must be filed with the Secretary not later than March _____, 19____, the last date for filing Nominating Petitions. If the receipt from the County Clerk showing that you have filed such a Declaration is not filed with the Secretary of the Board of Education on or before March _____, 19____, your Nominating Petition will be invalid and cannot be accepted.

_____
Robert Williams, Secretary
Board of Education of School District No. 5,
Mythical County, Illinois

nominating petitions, provided that the candidate has filed with the county clerk (within the required time) a notice indicating his intention to take advantage of the 30-day grace period provided for in Section 604A-105 of *The Ethics Act*.

The problem arises from what appear to be conflicts in the two statutes dealing with this subject. The answer is a practical one and is based upon the general legal principle that, where two different statutes on the same subject appear to conflict, they should be read in such a manner that carries out the legislative intent as nearly as possible.[15]

We believe that the legislative intent in this case is that **a candidate for a school board must file an ethics statement**. When *The Ethics Act* was passed, very strict time limits were imposed, but the legislature soon found that people who intended to comply were having problems in meeting the deadlines. The statute was changed to grant some leeway with the 30-day grace period. However, the grace period could not be invoked unless the candidate filed a notice stating that he was taking advantage of it.

If a nominating petition is submitted to you along with a receipt from the county clerk indicating that the ethics statement was filed on time, you have no problem. If the candidate presents the nominating petition without this receipt (or a receipt showing that he has filed the notice invoking the 30-day grace period), you should tell him that he has until the last day for filing nominating papers to give you a receipt showing that he has either invoked the grace period or he has filed his ethics statement.

If he files his receipt with you showing that he has invoked the grace period, then he has 30 days after the last filing date to file his ethics statement and a reasonable time after that to file a receipt from the county clerk with you.

Only when you do not get either the receipt showing filing of the ethics statement or a receipt showing filing of the notice of intention to invoke the grace period by the last day for filing nominating petitions should you advise the candidate that his nominating petition has not been accepted and that his name will not be placed on the ballot.

Our opinion is not based upon any court interpretations of *The School Code* and *Ethics Act* requirements. If you confront a problem involving a candidate's ethics statement, ask your school attorney for advice.

4.3 The Receipt for the Nominating Papers

When the candidate has presented his nominating papers and you have determined that they are in apparent conformity with the statute, you must give him a receipt acknowledging acceptance of the petition. You have seven days from the date

of filing to do so, unless the last day for filing nominating papers comes first. In that event, you must acknowledge acceptance not later than the last day for filing. These requirements are contained in Section 9-10 of *The School Code*. A suggested form of receipt is shown in **Form Eight**.

Also, do not forget that you must notify the candidate, at the time he files, that he may have an obligation to file reports under the *Campaign Financing Act*. Whether a candidate is subject to that act is discussed more fully in **Chapter 19 — Campaign Financing Statements.**

5. More Election Events

5.1 Applying for Absentee Ballots

The 30th day before the election is the first date that voters who are not in the military service may file applications for absentee ballots as provided in Section 19-2 of *The Election Code*. But you won't have the ballots ready by this time because, for example, a candidate can withdraw up to the 18th day before the election (Section 9-10 of *The School Code*). If you receive any applications for absentee ballots at this early stage, just keep them on file. (The procedures for absentee voting are covered in Chapter Seven of this book.)

5.2 Requirements for Voters

The next entry on the calendar appears on the 28th day before the election. This is to remind you that voters must be registered and must have lived in the school district for 28 days prior to the election in order to be eligible to vote (see Section 9-3 of *The School Code*).

There are two questions involved in determining whether a person can vote in a school election: Is he qualified? and, Is he registered?

The qualifications a person must have in order to be registered include:

1) **He must** be a United States citizen.

2) **He must** be at least 18 years old on the

Key Concept Five — Determining Voter Eligibility

School election judges often ask how they are to know whether a person who presents himself to vote is registered or not. What responsibility does a judge have in a school election to make an independent determination about whether a proposed voter is registered?

Often the school election judge will not know whether a prospective voter is registered. One way to get information is to obtain the latest list of registered voters from the county clerk or board of election commissioners. Section 4-11 of *The Election Code* requires county clerks in counties of less than 500,000 population to prepare a list of registered voters prior to each general election in November of even-numbered years. The municipal clerks in Cook County are required by Section 5-32 of *The Election Code* to do the same prior to each municipal election in April. Sections 6-43 and 6-48 of *The Election Code* have similar provisions for territories governed by boards of election commissioners. You could obtain one of these lists for all the territory in your school district and then sort out the names so that they fit your precinct boundaries.

However, since this procedure is not sanctioned by statute, you'll have to look on it merely as a means of assistance, rather than as an absolute guide, in determining whether a person is registered to vote.

The election judges do have two safeguards. First, before a person can vote in a school election, he must sign an affidavit in which he states, among other things, that he is registered to vote (see Section 3.7 of this book). If he is not registered and he knows that he is not, he has committed the felony of perjury and, upon conviction, can be sentenced to up to 10 years in prison and a fine of up to $10,000.[1] That in itself, should deter a person from voting if he is not registered.

Second, a prospective voter can be challenged by someone who does not think that he is registered. This is provided for in Section 9-14 of *The School Code*. If so challenged, the prospective voter then is required to sign an affidavit in which he states that he is registered. He also is required to bring in a witness who must state that he knows how long the challenged voter has lived in the school district. (See Section 17-10 of *The Election Code*.) Here, again, knowingly making false statements under oath will subject the person who made them to penalties for perjury.

FORM NINE —
The Statement of Withdrawal of Candidacy

STATEMENT OF WITHDRAWAL OF CANDIDACY

TO: The Secretary
Board of Education of School District No. 5
Mythical County, Illinois

Heretofore there was filed in your office a Nominating Petition in which my name appears as a nominee for the office of Member of said Board of Education, for the full term of three years (or, to fill a vacancy in an unexpired term of _____ years) to be voted upon at the election to be held in School District No. 5 on April _____, 197___. I herewith advise you that I withdraw as a candidate for such office.

Dated at Ourtown, Illinois, this _____ day of March, 197___.

/s/_____

STATE OF ILLINOIS)
) SS
COUNTY OF MYTHICAL)

I, David Hamilton, a Notary Public in and for said County and State, certify that on the _____ day of March, 197___, KATHERINE BROOKMAN personally appeared before me and subscribed to the foregoing Statement of Withdrawal of Candidacy, and acknowledged that she signed and delivered the foregoing instrument as her free and voluntary act, for the uses and purposes therein set forth.

Witness my hand and seal this _____ day of March, 197___.

_____
Notary Public

My Commission expires:
_____

day of the election.

3) He must have resided in the State for 30 days. In order to vote in the school election, the voter must also have resided in the school district for at least 28 days prior to the election. Note that this does not require that he must have resided in the school district's voting precinct for that period of time. He simply must have been a resident somewhere in the school district for the 28-day period.

Registration is the process a person goes through when he presents himself to the registrar (county clerk or board of election commissioners) and swears that he has met the qualifications. Unless there is a challenge, the registrar will fill out two sets of registration cards (three in Cook County). One set will be kept in the registrar's office. The duplicate set is arranged geographically by precincts and put into binders. These are sent to the precinct polling places in general elections. (The third set is kept by municipal clerks in Cook County.)

There is no provision in *The School Code* or in *The Election Code* for delivery by the registrar of registration card binders to judges in school elections. The general practice is that registration cards are **not** sent to school election precincts. Usually, school election precincts have considerably different boundaries from those used in general elections, so the binders wouldn't be helpful anyway.

Thus, the school election judge must rely on the statements made to him by the prospective voter concerning whether he is registered. (See **Key Concept Five — Determining Voter Eligibility.**)

5.3 The Last Day to File Nominating Papers

The 22nd day before the election is the last day for candidates to file nominating papers and the last day for candidates to file receipts from the county clerk showing that they have filed their ethics statements. (See Section 9-10 of *The School Code* and Chapter 127, Section 604A-105, *The 1975 Illinois Revised Statutes.*)

5.4 Withdrawal of Candidacy

The 18th day before the election is the last day on which a candidate may withdraw from the race. He does so by filing an acknowledged state-

Key Concept Six —
Failure to Withdraw or Qualify

What do you do if the candidate changes his mind about running after the last date to withdraw? Section 10-7 of *The Election Code* says that a candidate's name must appear on the ballot if he has not filed a withdrawal notice on time. If he has moved out of the district before election day but gets the highest number of votes of any candidate, his vote is counted and included in the declaration of results. But the school board then immediately declares a vacancy because the candidate has failed to qualify. The vacancy then is filled by the remaining members of the board until the next election (see Section 10-10 of *The School Code*).

If the candidate dies before the election and his nominating papers were in order, but he did not withdraw within the required time and he gets "elected," he is treated in the same way as a candidate who fails to qualify. A vacancy is declared and filled by the remaining board members.

ment of withdrawal with the secretary (see Section 9-10 of *The School Code*). In **Form Nine** we have provided a suggested form for this purpose.

When you receive a statement of withdrawal of candidacy, write on the face of it the date and time you receive it. Then file it with the election record, along with the nominating petition and other documents in connection with the candidate.

Frequently, a candidate will withdraw simply because he doesn't want to run or because he has changed plans and expects to move out of the district in a short time. Occasionally, however, a candidate will be nominated both for a full term and for an unexpired term. In such a case, he must choose which office he wants to fill. He is then required by Section 9-10 of *The School Code* to withdraw from the other race.

If he doesn't withdraw, the secretary must take action. *The School Code* does not address this problem, so we must look to *The Election Code* for guidance. Section 10-7 of *The Election Code* says that, when a candidate has been nominated to incompatible offices and does not withdraw from the nomination for one of them, the election official is required to strike his name from all nominating petitions except the first one received. Presumably the same rule would apply to school elections. (See **Key Concept Six — Failure to Withdraw or Qualify.**)

6. Ballots

6.1 When the Ballots Must Be Ready

The next event is 10 days before the election. Section 9-8 of *The School Code* provides that the ballots must be printed and in your possession by this date. They are then subject to inspection by the candidates and their agents.

Although you must have the ballots ready 10 days before the election, you should start work on the printing of the ballots before that time. You can't send the ballots out to be printed prior to the 18th day before the election, however, because candidates may withdraw up to that date. Thus, you have only a week in which to prepare the copy and send it to the printer, get a proof back, have it checked by your school attorney, and then get the ballots printed and delivered to you. (Note that we have recommended that you have your school attorney check the ballot. The ballot is the most important piece of paper in the election. If it is not in proper form, the whole election is void.[17])

You must check a number of things to be cer-

Key Concept Seven — Types of Ballots

Listed below are the types of ballots provided for in *The School Code*:

a) Ballots for those districts having a population of less than 1,000 persons and governed by a board of three school directors rather than by a seven-member board of education (see Form Ten).

b) Ballots for those districts of at least 1,000 population, but not more than 500,000 and governed by a board of education of seven members (see Forms Eleven and Twelve).

c) Ballots for those Community Unit School Districts that have these characteristics:

- **The territory consists of not more than two congressional townships or 72 square miles, and**
- **The district contains a city, village, or incorporated towns, and**
- **More than one congressional township or more than 36 square miles of the district is not within the corporate limits of any city, village, or incorporated town (see Form Thirteen).**

d) Ballots for those Community Unit School Districts that consist of more than two congressional townships or 72 square miles and were created before January 1, 1975 (see Form Fourteen). For such districts created after January 1, 1975, see Form Eleven or Twelve.

e) Ballots for those districts having seven-member boards of education, but where the voters of the district have approved the election of the board members by district, rather than at large, as provided for in Section 9-22 of *The School Code* (see Form Fifteen).

FORM TEN — Ballot for the Election of School Directors

(Front of Ballot)

OFFICIAL BALLOT

For Member to Serve for _____ Years
(Vote for _____)

☐ _____
☐ _____

(Back of Ballot)

OFFICIAL BALLOT

_____ County, Illinois
Election Saturday, April _____, 197___.

(Facsimile Signature)
_____
Regional Superintendent of Schools

FORM ELEVEN — Ballot for the Election of Members of a Board of Education Elected at Large from the School District

(Front of Ballot)

OFFICIAL BALLOT

For Members of the Board of Education
To Serve for _____ Years
(Vote for _____)

☐ James Madison
☐ James Monroe
☐ _____
☐ _____

(Back of Ballot)

OFFICIAL BALLOT

_____ County, Illinois
School District No. _____
_____ County, Illinois
Election Saturday, April _____, 197___.

(Facsimile Signature)
_____
Secretary, Board of Education

FORM TWELVE — Ballot for the Election of Members at Large (Including the Election of Members To Fill Unexpired Terms)

(Front of Ballot)

OFFICIAL BALLOT

For Members of the Board of Education
To Serve for Three Years
(Vote for Two)

☐ James Madison
☐ James Monroe
☐ _____
☐ _____

For a Member of the Board of Education
to Fill An Unexpired Term of Two Years
(Vote for One)

☐ Benjamin Harrison
☐ James Polk
☐ _____

For a Member of the Board of Education
To Fill An Unexpired Term of One Year
(Vote for One)

☐ Millard Fillmore
☐ James Buchanan
☐ _____

(Back of Ballot)

OFFICIAL BALLOT

_____ County, Illinois
School District No. _____
Election Saturday, April _____, 197___.

(Facsimile Signature)
_____
Secretary, Board of Education

tain that the ballot is in proper form. Let's go through these.

6.2 Ballot Forms

Does the ballot comply with Section 9-12 of *The School Code*? That section provides forms for various types of school districts. The various types of ballots are described in **Key Concept Seven**.

6.3 Length of Terms

In the form for the ballot for the election of members of seven-member boards of education in districts with a population of 1,000 to 500,000 (see **Form Eleven**), we have not filled in the number of years that the term is to run. This is because some board members in these districts are elected for three years, but others are elected for six years. The difference depends upon whether the board of education holds its elections every year, under Section 9-5(a) of *The School Code*, or every other year, under Section 9-5(b) of *The School Code*. Under the latter section, the voters of a school district may decide (by a referendum held at a regular school election) to change from annual school elections to school elections held only in odd-numbered years. In that event, the term of office of a board member is six years.

Be careful if one or more of the candidates in your election is running to fill an unexpired term. Assume for a moment that last year a board mem-

Key Concept Eight — Congressional Townships

If your district is large enough to fall into the categories of Community Unit School Districts discussed in Section 6.4 of this book, you must be aware there are two kinds of "townships." The first is the "congressional township." The other is the "political township," or just plain "township."

When a deed describes land conveyed as being located in "Township 39 North, Range 13, East of the Third Principal Meridian in Mythical County, Illinois," the township referred to is the "congressional township." It has this name because, in 1796, Congress directed that the country be surveyed and divided into six-mile-square areas to be known as townships.[19] "Congressional townships" are named with numbers indicating their location in the county.

The other kind of township, the "political township," is authorized by *The Illinois Township Organization Act*.[20] If the voters have approved by referendum the proposition that their county should be divided into political townships, then a board of commissioners is appointed to draw the boundaries. Section 6 of *The Township Organization Act* says that the political township boundaries must be the same as those for the congressional townships. However, when the surveyors laid out the congressional townships, they created "fractional" townships. These are congressional townships that are irregular in shape and that may contain less than 36 square miles. They occur along rivers, at the edge of Lake Michigan, or where the curvature of the earth caught up to the surveyors who were operating as though the earth were flat. Thus, a correction had to be made to conform to the true surface configuration.

This is important because *The Township Organization Act* says that the commissioners may connect fractional congressional townships to an adjacent political township, or may otherwise alter the boundaries of the political township because natural boundaries may have been included in the congressional township. So it is not always certain that the political township will be the same as its corresponding congressional township.

Political townships are named by the commissioners in accordance with the wishes of the inhabitants. When someone says that he lives in "Hillcrest Township," he is undoubtedly referring to the political township.

A problem arises for Community Unit School Districts large enough to elect by township when the congressional townships are not the same as the political townships. Section 11-8 of *The School Code* uses the words "congressional townships," yet the form of ballot shown in Section 9-12 of *The School Code* uses the form "_____ Township," indicating that the legislature probably intended that a name is to be inserted in the blank and, therefore, that political townships are intended to be inserted rather than congressional townships.

Voters probably know what political townships are in their district but don't know where congressional township boundaries lie. Therefore, it is probably the legislature's intent that the political townships be used in this type of election rather than the congressional township, even though the word "congressional" is in the statute.

ber with two years remaining in his term died and that one with one year to go moved out of the district. As provided by Section 10-11 of *The School Code*, each of these events caused a vacancy in office. The board of education filled these vacancies by appointment, but you now are approaching the next general election after the new members were appointed. They must stand for election to fill the unexpired terms (see Section 10-10 of *The School Code*).

6.4 Residence of Board Members in Community Unit Districts

For election purposes, there are two types of Community Unit School Districts. The distinction is based upon their sizes as determined in Section 11-8 of *The School Code*. If the districts contain more than two congressional townships or more than 72 square miles, they fall into one category. If they have less than either of these two units of measure, they fall into another. (The term "congressional township" is discussed in **Key Concept Eight.**)

Section 11-8 of *The School Code* makes these distinctions in an attempt to divide membership in these districts into "densely populated" or "sparsely populated" areas. (Stated another way, the division is in terms of "city" and "country" board members.) The distinctions also may be an attempt to conform that type of representation to the "one-man, one-vote" rule contained in *Baker v. Carr*, a U.S. Supreme Court case.[18]

First, let's look at the district with more than two congressional townships or more than 72 square

miles. There are two subclasses of this type of Community Unit School District created by Section 11-8 of *The School Code*. For this type of unit district created after January 1, 1975, there is no restriction on the number of board members that can be elected from any particular area.

For those that already were in existence on January 1, 1975, you must determine the population in each township. If the population is evenly divided, not more than three board members can be elected from any one township. Townships of less than 100 in population are not to be considered in this decision. However, if 75 to 90 percent of the population is in one township, four members can be elected from that township and the remaining three from the rest of the district. If the population in one township is more that 90 percent of the total population in the district, all of the board members can be elected from the district at large, including all seven from the highly populated district if that is the way it turns out.

Where a Community Unit School District has less than two congressional townships or 72 square miles, one additional requirement is imposed by Section 11-8 of *The School Code* in order for the district to have representation by district. The district must have at least 36 square miles located outside of the corporate limits of a city, village, or incorporated town. If it does, then not more than five board members can be elected from the "city," the other two must live in the "country."

Note, however, that what is being limited here is the residence of the candidate and not that of the voters. If a voter lives in the Village of Ourtown, he may vote both for a "city" member and for a "country" member. The same is true for a voter who lives in Hillcrest Township, who may vote for candidates wherever they live. The difficulty appears when you count the ballots. Each voter

FORM THIRTEEN — Ballot for the Election of Members of the Board of Education of a Community Unit School District Where the Membership Is Divided Between Those Who Live Within a Municipality and Those Who Don't

(Front of Ballot)

OFFICIAL BALLOT

For Members of the Board of Education
To Serve for Three Years

(Instructions to voters: Vote for _____. Not more than _____ members may be elected from any city, village, or incorporated town.)

☐ JAMES MADISON
472 Pine Grove Lane
Ourtown, Illinois

☐ JAMES MONROE
3863 West Grand Avenue
Grandville, Illinois

☐ JAMES BUCHANAN
Rural Route 2
Centerville, Illinois

☐ _____
_____
(Insert residence)

(Back of Ballot)

OFFICIAL BALLOT

_____ County, Illinois
School District No. _____
_____ County, Illinois
Election Saturday, April _____ 197__

(Facsimile Signature)
_____
Secretary, Board of Education

FORM FOURTEEN — Ballot for the Election of Members of the Board of Education of a Community Unit School District Where the Residence of Members Is Restricted to Particular Townships

(Front of Ballot)

OFFICIAL BALLOT

For Members of the Board of Education
To Serve for _____ Years

(Instructions to voters: Vote for _____. Not more than three members may be elected from any one township. On the basis of existing membership, not more than _____ members may be elected from _____ Township.)

☐ James Madison
of _____ Township

☐ James Monroe
of _____ Township

☐ Andrew Jackson
of _____ Township

☐ _____
of _____ Township

☐ _____
of _____ Township

(Back of Ballot)

OFFICIAL BALLOT

School District No. _____
_____ County, Illinois
Election Saturday, April _____, 197__

(Facsimile Signature)
_____
Secretary, Board of Education

votes for all candidates, regardless of the voter's residence. But, when the final count is tallied, only three board members can be from any one township (or five from the "city" and two from the "country"). Even though one candidate from Hillcrest Township may get more votes than one from Plain View Township, the Hillcrest candidate does not win if he didn't beat the top candidate from Hillcrest Township if that would result in more than three Hillcrest members on the board.

6.5 Electing Board Members from Voting Districts

In **Key Concept Seven**, we indicate that Section 9-12 of *The School Code* provides a separate form of ballot for districts that select board members from voting districts within the school district. This is permitted if, pursuant to Section 9-22 of *The School Code*, the voters of the school district have approved the proposition of selecting members by geographic area, rather than from at-large throughout the school district.

In these districts, the residence of the candidate is restricted to a particular area and the residence of the voters is limited to the area in which they live. Separate ballots must be prepared for each school board district.

The terms of office of members of this type of district are six years each and are staggered. In order for this to occur, all terms of office must expire at the first regular election after the referendum passes, regardless of how long the incumbents have served. A new board of seven members then is elected. After the election, the winners draw lots to see how long their terms are to be. Three get two year terms; two get four year terms, and two get six year terms.

The next election is two years later, and every two years thereafter. Candidates elected at the elections following the first are elected to six year terms.

Form Fifteen shows the ballot to be used for school districts that elect members from voting districts within the school district. You will note that on this form we show both a voting district number and a precinct number. This is because a voting district may be so large that it is subdivided into several precincts. Be careful in drawing the precinct boundaries in such a case so that they coincide on the perimeter with the lines of the voting districts.

You can show the precinct designations on the reverse of any of the ballots as provided in Section 9-12 of *The School Code* (except for the election of directors, where there is only one precinct). This is optional. You must make an additional press run to do it, but it may be to your advantage later if you confront a discovery recount or an election contest. You'll be able to determine which ballots were cast where.

FORM FIFTEEN — Ballot for the Election of Members Where the Residence of Both Members and Voters Is Restricted to a Voting District within the School District

(Front of Ballot)

OFFICIAL BALLOT

For Member of the Board of Education

(Instructions to voters: Vote for one.)

☐ James Madison
☐ James Monroe
☐ _____

(Back of Ballot)

OFFICIAL BALLOT

School District No. _____
_____ County, Illinois
Election Saturday, April _____, 197___.

Precinct No. 3
Board District No. 1
Polling Place: Windermere School
558 South Pontiac Road
Ourtown, Illinois

(Facsimile Signature)
_____
Secretary, Board of Education

6.6 The Order of Candidates' Names

Continuing with our ballot checklist: Do the candidates' names appear on the ballot in the order in which their nominating petitions were filed? Remember, this is required by Section 9-10 of *The School Code.*

6.7 The Spelling and Form of Candidates' Names

Are the candidates' names spelled correctly? There is no statutory requirement that they must be spelled correctly, but common sense indicates that they should be.

What if they are not? If there is enough time left to get the ballots reprinted, it's probably better to do so. If there isn't, you may have to rely on two general rules of election law:

1) **Only when a mandatory provision concerning the ballot has not been observed is the election invalid.** Since there is no statutory requirement that the names be spelled correctly, no mandatory provision is involved here.[21]

Key Concept Nine — Look Alike and Sound Alike

The rule of "look alike" and "sound alike" will be important when it comes to counting write-in votes. As the Supreme Court stated in *Hester v. Kamykowski*:

> **" . . . while the legal safeguards which are thrown around the ballot must be faithfully observed by those who have been entrusted with their enforcement, yet under the pretense of enforcing them the will of the people should not be defeated by an honest mistake of election officials; . . . literal compliance with prescribed forms will not be required if the spirit of the law is not violated; . . . forms should be subservient to substance when no legal voter has been deprived of his vote and no harm or injury of any kind has been done to anyone."[23]**

2) **The name as it appears** on the ballot must look like and sound like the correct name of the candidate.[22] (See **Key Concept Nine.**)

Thus, if the candidate's name is spelled "Murphey," but you put "Murphy" on the ballot, and there is no other candidate with a similar name in the race, the ballot probably will be sustained if it is challenged. However, it's better to avoid the lawsuit by checking the proof of the ballot before it is printed.

In what form do the candidates' names appear on the ballot? Assume that the nominating papers for one candidate showed his name as "G. S. (Smokey) Ramone." It is permissible to print his name on the ballot that way, including the name "(Smokey)." But it is **not** permissible to print a candidate's name this way: "Donald Farwell, M.D." The "M.D." designation cannot be shown, according to rules in Section 16-3 of *The Election Code.* In the case of *People ex rel. Richter v. Telford*, the abbreviations "Dr." and "O.D." were held not to be proper in connection with a candidate's name on the ballot.[24]

6.8 The Size of Type on the Ballot

In what size of type are the candidates' names to be printed? *The School Code* does not have a requirement for this, but Section 16-3 of *The Election Code* provides that the candidates' names must be printed in capital letters at least one-eighth of an inch in height, but not more than one-quarter of an inch in height. *The Election Code* also provides that, in front of each candidate's name, there must be an open square, the sides of which must not be less than one-quarter of an inch long.

6.9 Ballots Must Be Printed

Must the ballots be printed? Section 9-8 of *The School Code* says: "Ballots shall be printed . . ." But what does *printed* mean? We often have been asked whether ballots can be typewritten and reproduced by mimeograph or prepared through some similar process.

In California, typewriting is held to be printing, but in Pennsylvania it is not.[25]

In Illinois, a rule of the Supreme Court describes what methods of reproduction may be used for briefs in appeals. That rule provides in part as follows:

> "Original typewritten pages may be used, but not carbon copies. If printed, the brief shall be on paper 6¾ by 10 inches in type not smaller than 11 point . . . . If not printed, the brief . . . shall be on 8½ by 11 inches . . . with the text in type not smaller than standard elite type writing . . ."[26]

A Supreme Court Rule is not a legal precedent, but it is a good indication that if the question ever is presented to the Illinois Supreme Court, the court probably would hold that there is a distinction between "printing" and "typewriting." Therefore, because *The School Code* says that ballots must be printed, it's advisable to send them out to a "printer" rather than to take a chance with ballots that are typewritten and produced by mimeograph or a similar reproduction process.

6.10 Write-In Votes

Have you left sufficient space for voters to write in candidates' names? There must be sufficient space in each area of the ballot for a voter to do so. The "pictures" of the ballots in Section 9-12 of *The School Code* show that the ballot must have a box and a line on which a write-in candidate's name may be placed. There should be one such blank line for each of the offices to be filled.

6.11 The Paper Must Be Opaque

When you fold the ballot with the candidates' names inside, does the printing show through? It must not. Section 16-3 of *The Election Code* provides that the paper must be of such consistency that the printing or writing cannot be seen through it.

6.12 The Color of the Paper

What color should the paper be? *The School Code* does not specify a color. *The Election Code* provides for a variety of colors, depending upon

what the ballot is to be used for. For regular elections of officers, the ballot must be plain white (see Section 16-3 of *The Election Code*). Ballots for primaries must be different colors for each party (see Section 7-18 of *The Election Code*); these colors must be different from the ones used for the specimen ballots (see Section 7-21 of *The Election Code*). Ballots for constitutional amendments must be on blue paper (see Section 16-6 of *The Election Code*). Ballots for the retention of judges and for public policy measures each must have their own different colors (see Sections 16-6.1 and 16.7 of *The Election Code*).

Since the *School Code* does not specify the color of the ballot for the election of board members, we will follow the usual rule of looking to *The Election Code* for guidance. Thus, we believe that the school election ballot should be on **plain white paper.**

However, there may be instances in which you might want to deviate from this general rule. Assume that you are sharing judges with the high school and the community college. In order to make it easier for both the voters and the judges, you might want to consider printing your ballots on a color that is different from that used by others. If the underlying reason is voter assistance, we believe this deviation is acceptable.

One final caution. Assume that you are sharing judges in two precincts, but not in the rest. If you decide to choose green for your ballots, for example, you must use green for all precincts, not just for the ones in which you are sharing judges.

FORM SIXTEEN —
Ballot for a Public Policy Referendum

(Front of Ballot)

Shall the Board of Education of School District No. 5, Mythical County, Illinois, issue $250,000 School Building Bonds for the purpose of building and equipping an addition to the existing Lincoln School Building, said bonds to bear interest at a rate or rates not to exceed eight percent (8%) per annum?

YES

NO

(Back of Ballot)

OFFICIAL BALLOT

Ballot for the proposition: Shall the Board of Education of School District No. 5, Mythical County, Illinois, issue $250,000 School Building Bonds for the purpose of building and equipping an addition to the existing Lincoln School Building, said bonds to bear interest at a rate or rates not to exceed eight percent (8%) per annum?

Date of election: September ____, 197__.

(Facsimile Signature)

Secretary, Board of Education of School District No. 5, Mythical County, Illinois

6.13 The Ballot for a Referendum

Let's look at a ballot for a public policy referendum, such as one to authorize a tax increase or to approve a bond issue.

Section 9-13 of *The School Code* contains the requirements for a public policy ballot. For demonstration purposes, assume that the proposition to be voted upon is the issuance of bonds to finance the construction and equipping of an addition to the Lincoln School. The ballot will look like the one shown in **Form Sixteen.**

Several points about the public policy question form of ballot are worth noting. The first and most important is that both the language used to state the proposition and the form of the ballot are sensitive matters. Referenda have been held invalid because the propositions were stated in such a manner that the voter did not have a clear alternative to vote for or against the proposition.[27] For this reason alone it is essential that the form of the ballot and the language used to state the proposition be approved by your school attorney.

Second, as you can see in **Form Sixteen,** the maximum rate of interest is stated as 8 percent per annum, rather than the 7 percent limitation contained in Section 19-2 of *The School Code.* This is because *Public Act 79-401* has amended Section 2 of the act fixing the interest rate for obligations of public corporations. This amendment increased the maximum rate of interest to 8 percent per annum.[28]

Third, Section 9-13 of *The School Code* says that a public policy ballot must be large enough so that, when folded, it will "contain" the language shown in Form Sixteen on the back of the ballot. We are not sure what "contain" means. But similar language is in Section 16-3 of *The Election Code*: " . . . so as to appear when folded." In order to comply with the "contain" directive in Section 9-13 of *The School Code*, follow the rule in Section 16-3 of *The Election Code* and instruct the printer to prepare the ballot "with the language appearing below the fold when the ballot is later folded in half." (Don't ask the printer to fold the ballots, though.)

Fourth, don't forget that, if a public policy

question is submitted at the same time as the election of board members, the two ballots must be of different colors (see Section 16-7 of *The Election Code*).

6.14 The Number of Ballots

Make sure that you have enough ballots printed. Section 9-8 of *The School Code* provides that you must deliver to the election judges 100 ballots for every 50 votes cast in the precinct at the last election for school officers. The ballots must be packaged in groups of 100.

You must also keep an "ample supply" of ballots available in case a precinct runs out of ballots. Remember to save at least 10 blank ballots for each precinct and to keep them for the election record. Do this for every document used in the election (see **Key Concept Three**).

7. Absentee Voting

7.1 The Statutory Basis

The calendar of events shows that the fifth day before the election is the last day that the secretary can receive applications for absentee ballots by mail. So let's start back at the beginning of the absentee voting procedure.

It is essential to note that procedures for absentee voting in school elections are not covered in *The School Code*. Rather, Section 9-14 of *The School Code* specifically incorporates the absentee voting procedures contained in *The Election Code*. So we must look at the latter for direction. (Also, see **Key Concept Ten — Absentee Voter Residency.**)

It also is essential to note that *The Election Code* provides two sets of directions for absentee voting: Article 19 is the basic statutory procedure for absentee voting, while Article 20 provides options for persons in military service and certain other classes of voters.

7.2 Persons in the Military Service and Others

The first day that persons in the military service (and certain other classes as defined in Section 20-1 of *The Election Code*) may apply for absentee ballots falls on the 100th day prior to the election. (The other classes include members of the merchant marine; civilian employees of the federal government stationed outside the country; and members of religious or welfare groups assisting

Key Concept Ten — Absentee Voter Residency

Section 9-3 of *The School Code* provides that a person must have lived in the state and in the school district for 28 days in order to be a legal voter. However, Section 3-1 of *The Election Code* states that one of the qualifications for voting is that the person must have lived in the state for six months and in the election district 30 days next preceding the election. This would not be important in school elections except that absentee voting in such elections is governed by *The Election Code* rather than *The School Code*.

However, we have deleted the provision concerning residence in the state for six months in the suggested ballot application forms. The reason is that a six month residency requirement for voting was held unconstitutional by the U. S. Supreme Court in *Dunn v. Blumstein*.[32] In that case, the court said that fixing a constitutionally acceptable residency period is a matter of degree, and that 30 days appears to be an ample period of time for the state to complete whatever administrative tasks are necessary to prevent fraud. The court held that three months was too long. In *Marston v. Lewis*, the U. S. Supreme Court held that a 50-day residency requirement is unconstitutional.[33]

Although the Illinois legislature has not yet changed the six month residency requirement in *The Election Code*, the Illinois attorney general has rendered his opinion that such a requirement is unconstitutional based upon *Dunn v. Blumstein*.[34]

We suggest that the apparent conflict between *The Election Code* and *The School Code* can be resolved this way: (a) In order to be registered to vote, the applicant must have lived in the state for at least 30 days, but (b) in order to vote in a school election, the proposed voter must not only be registered, but must also have lived in the school district for at least 28 days prior to the election.

the military. The spouses and dependents of these persons also are included in these classes of voters.) The last day that these voters may apply for absentee ballots is the fifth day before the election.

Special rules have been written into Article 20 of *The Election Code* in response to "recommendations to the states" made by Congress in *The Federal Absentee Voting Assistance Act.*[29] Some of these differences include:

1) Voters in these groups need not be registered. This rule applies to persons who were in the armed forces at any time during the 60-day period prior to the election (but have been discharged as of the election day), provided that they make the affidavit at the polls required by several sections of *The Election Code.*[30] The form for this affidavit is shown in **Form Seventeen** on page 38.

2) The time within which applications for absentee ballots may be filed is longer for these special groups than for others. Section 20-2 of *The Election Code* provides that persons in this category may file applications for absentee ballots from the 100th day to the fifth day prior to the election, rather than from the 30th day to the first day prior to the election as required for others under Section 19-2 of *The Election Code.*

3) The application need not be on the form provided in Section 20-3 of *The Election Code* (although it may be on this form). It can be on the Federal Post Card Application Form authorized in the federal statute.[31] The federal form is shown in **Form Eighteen,** the Illinois form in **Form Nineteen,** and the Illinois form for relatives of a serviceman in **Form Twenty,** all on pages 40 and 41.

FORM SEVENTEEN — Affidavit of Nonregistration of Persons in the Military Service or Other Exempt Classes

STATE OF ILLINOIS)
) SS
COUNTY OF MYTHICAL)

_____ Precinct

I, _____, do solemnly swear (or affirm) that I am a citizen of the United States, of the age of 18 years or over, and that within the past 60 days I have been engaged in the *(military/naval)* service of the United States; that I am qualified to vote under and by virtue of the Constitution and laws of the State of Illinois, and that I am a legally qualified voter of this precinct except that I have, because of such service, been unable to register as a voter; that I now reside at *(insert street and number, if any)* in this precinct, and that I have maintained a legal residence in this precinct for 30 days next preceding this election.

_____
(Signature)

SUBSCRIBED AND SWORN TO
before me this _____ day
of _____, A.D., 197___.

_____
Judge of Election

STATE OF ILLINOIS)
) SS
COUNTY OF MYTHICAL)

_____ Precinct

I, _____, do solemnly swear (or affirm), that I am a resident of this precinct and am entitled to vote at this election; that I am acquainted with *(name of applicant)*; that I verily believe him to be an actual bona fide resident of this precinct; and that I verily believe that he has maintained a legal residence therein 30 days next preceding this election.

_____
(Signature)

SUBSCRIBED AND SWORN TO
before me this _____ day
of _____, A.D., 197___.

_____
Judge of Election

7.3 Other Absentee Voters

The 30th day before the election is the first day for persons who do not qualify under Article 20 to apply for absentee ballots under Article 19 of *The Election Code.*

Section 19-1 of *The Election Code* states that the following classes of persons are entitled to absentee voting privileges (but they must be qualified and, where required, they must be registered):

1) One who expects to be absent from the county on election day.

2) One who is appointed an election judge in

Key Concept Eleven — A Change in the Statutes

Note that, in reproducing absentee voter forms, we have changed the statutory reference concerning penalties to read "Article 29 of *The Election Code,*" rather than "Section 29A-3 of *The Election Code*" as the statute now provides. The reason is that there is no Section 29A-3; it was repealed by Public Act 78-1297. The penalties for violations of the election law are now contained in Article 29 of *The Election Code.* Also note that we have made other editorial changes to adapt the forms to a school election.

a precinct other than where he resides. Note that this does not apply if only a school election is being held since Section 9-8 of *The School Code* requires that an election judge must have been a resident of the precinct in which he is appointed to act for a year prior to the election date. It might apply, however, if the school election is conducted simultaneously with a municipal or other election governed by *The Election Code* and the applicant for an absentee ballot is a judge in that election appointed to a precinct other than where he resides. This is permitted by Section 13-4 of *The Election Code*, which provides that not more than one judge of each party may be appointed to a precinct other than that of his residence.

3) One who is physically incapacitated.

4) One who will be observing a religious holiday on election day and, because of the tenets of his religion, will not be able to go to the polls.

Section 19-3 of *The Election Code* contains forms for the combined application and voter's affidavit for each of the above classes. Section 19-5 of *The Election Code* contains the forms to be printed on the ballot envelope. We have shown these in **Forms Twenty-One** through **Twenty-Four**, all on pages 42 through 44. (Also, see **Key Concept Eleven — A Change in the Statutes.**)

THE PROCEDURE FOR ABSENTEE VOTING

Here is a procedure that we recommend for absentee voting:

7.4 No Electioneering

The first thing you should do, beginning on the 30th day prior to the election (and continuing to the day before the election) is to ensure that there is no political campaign advertising inside, or within 100 feet of, any room in which it is expected that an absentee voter will be present during the absentee voting process. This is required by Section 19-2.1 of *The Election Code*.

7.5 The Time Period for Receiving Applications

Key Concept Twelve — Delivering Applications and Ballots

Frequently there are questions about whether the absentee voter must apply for the ballot himself (or can ask someone else to do it for him) and whether he must return the ballot himself after he has voted it (or can ask someone else to do that, too).

Section 19-2 of *The Election Code* speaks in terms of persons who qualify for absentee voting making an application and then returning the marked ballot (either by mail or in person). These are actions in which something moves from the voter to the secretary. In the first case, the voter initiates the action that causes the application to move into the secretary's possession. In the second, the voter initiates the action that causes the voted ballot to move into the secretary's possession. But the action by which the voter obtains the application which he will later file with the secretary is the reverse.

This may seem to be an unnecessarily minute analysis, but it is important to the result: Anyone can obtain a blank application for an absentee ballot for himself or for anyone else, but **only the voter himself may submit the filled-in application, and only the voter himself may return the voted ballot.**

In *Clark v. Quick*, a contest of the election for Madison County Clerk in 1938, Clark (a Republican) and Quick (a Democrat) were opponents. The canvassing board found that Quick received 17 votes more than Clark and declared Quick elected. Clark filed an election contest.[35]

At issue were 43 absentee ballots. An active Republican party worker obtained these absentee votes. They were given to the state's attorney, who was also a Republican committeeman. All of the votes, it turned out, were for Clark. The state's attorney testified that he placed some additional tape on the envelopes and put them in a safe in his office until election day, when some were mailed and some were delivered personally to the county clerk. The Supreme Court held that all of these absentee ballots were void because there was an opportunity for someone to tamper with them between the time the voter marked them and the time they were delivered to the county clerk.

Clark says, therefore, that only the voter himself may return the voted ballot. The case does not address the question of the return of the application, but we argue that it may apply by analogy because there has to be certainty that the ballot is being given to the voter who applied for it. However, since it makes no difference to the security of the ballot who obtains blank forms for the application, it appears that anyone can do this on behalf of anyone else.

Check to determine whether you have received the application for an absentee ballot within the statutory time period. Such an application may not be made before the 30th day prior to the election except for persons in the military service and certain others (see Section 7.2 of this book). If the application is made by mail, you must receive it not later than the fifth day prior to the election. If the application is made in person, you must receive it not later than the day before the election. These time limits are set forth in Section 19-4 of *The Election Code*. (Also see **Key Concept Twelve — Delivering Applications and Ballots.**)

7.6 Determining Voter Eligibility

When you receive an application for an absentee ballot, "examine the records to ascertain whether or not such applicant is lawfully entitled to vote" as directed by Section 19-4 of *The Election Code*. This presents a conceptual difficulty because, during the second week prior to the election, registration challenges may be made, and it isn't until the first week prior to the election that appeals from decisions of the board of election commissioners to erase voters' names from the register are heard by the circuit court (see Sections 4-12, 4-13, 5-15, 5-16, 6-44, 6-45 and 6-46 of

FORM EIGHTEEN —
Federal Post Card Application for an Absentee Ballot

(Front of Post Card)

State or Commonwealth _____

(1) I hereby request an absentee ballot to vote in the coming election: *(General) (Primary)* (Special)* Election (Strike out inapplicable words).

(2) *If a ballot is requested for a primary election, print your political party affiliation or preference in this box:

(3) I am a citizen of the United States, eligible to vote in the above State, and am:

a) A member of the Armed Forces of the United States ☐.

b) A member of the merchant marine of the United States ☐.

c) A citizen of the United States temporarily residing outside of the territorial limits of the United States and the District of Columbia ☐.

d) A spouse or dependent of a person listed in (a) or (b) above ☐.

e) A spouse or dependent residing with or accompanying a person described in (c) above ☐.

(4) I was born on _____
(Day) (Month) (Year)

(5) For _____ years preceding the above election my home *(not military)* residence in the above State has been _____
(Street and number or rural route, etc.)
in the county or parish of _____. The voting precinct for this residence is _____.
(Enter if known)

(6) Remarks:

(7) Mail my ballot to the following official address: For those assigned in the U.S.:

_____
(Unit, Co., Sq., Trp., Bn.)
(Gov't. Agency, or Office)

(8) I am NOT requesting a ballot from any other State and am not voting in any other manner in this election, except by absentee process, and have not voted and do not intend to vote in this election at any other address.

(9) _____
(Signature of person requesting ballot)

(10) _____
(Full name, typed or printed, with rank or grade, and service number)

(11) Subscribed and sworn to before me on
_____
(Day, month, and year)

_____
(Signature of official administering oath)

_____
(Typed or printed name of official administering oath)

_____
(Title or rank, service number, and organization of administering official)

INSTRUCTIONS

Before filling out this form, see your voting officer in regard to the voting laws of your State and the absentee registration and voting procedure. Type or print all entries except signatures. FILL OUT BOTH SIDES OF THE CARD. Address the card to the proper State official. Your officer or commanding officer will furnish you with his title and address. Mail the card as soon as your State will accept your application. NO postage is required for the card.

(Back of Post Card)

FILL OUT BOTH SIDES OF THE CARD

_____
_____
_____

FREE of U.S. Postage
Including Air Mail

OFFICIAL ELECTION BALLOTING MATERIAL — VIA AIR MAIL

To: _____
(Title of Election Official)

_____
(County or Township)

_____
(City or Town, State)

40

The Election Code).

To examine the records, obtain from the county clerk a corrected list of voters from the last election. These must be prepared by the county clerk in counties of less than 500,000 population in accordance with Section 4-11 of *The Election Code*. (The county clerk of Cook County and the Board of Election Commissioners of Chicago also have printed lists.) Presumably, you will fulfill your obligation to determine whether the absentee voter applicant is "lawfully entitled to vote" if you check this list or any other current registration information available to you.

You do have a safeguard. The application for an absentee ballot provides that the statements made on it (one of which is that the applicant is "lawfully entitled to vote") are made subject to the penalties provided by law. Section 29-10 of *The Election Code* provides that any person who makes a false statement that he does not believe to be true in any affidavit required by *The Election Code* is guilty of a Class 3 felony. The penalty for committing a Class 3 felony is imprisonment from one to 10 years, or a fine of up to $10,000.[36] The chances are that the applicant is telling the truth when he says in his application that he is "lawfully entitled to vote."

7.7 The List of Applications

After you have "examined the records" and found that the applicant is "lawfully entitled to vote," next enter the following information on a

FORM NINETEEN — Illinois Application Form for an Absentee Ballot by Persons in the Military Service

Application for ballot to be voted at the *(school)* election in the precinct in which is located the elector's legal residence at _____ in the city or town of _____, County of _____ and State of Illinois.

I state that I am a citizen of the United States; that on *(insert date of election)* I shall have resided in the State of Illinois for 30 days; that on the above date I shall be above the age of 18 years; that I am lawfully entitled to vote in such precinct at that election; that I am a member of the United States Service; that in the course of my duties I expect to be absent from the said county of my residence on the date of holding such election; and that I will have no opportunity to vote in person that day.

I hereby make application for an official ballot or ballots to be voted by me at such election if I am absent from the said county of my residence, and I agree that I shall return said ballot or ballots to the official issuing the same in sufficient time for such official to deliver said ballot or ballots to the proper polling place prior to the closing of the polls on the date of the election, or I shall destroy said ballot or ballots.

Under penalties as provided by law pursuant to Article 29 of The Election Code, the undersigned certifies that the statements set forth in this application are true and correct.

_____
(Signature)

Post office address to which ballot should be mailed:

_____
_____
_____

FORM TWENTY — Illinois Application Form for an Absentee Ballot by Relatives of Persons in the Military Service

Application for ballot to be voted at the *(School)* election in the precinct in which is located the elector's legal residence at _____ in the city or town of _____, County of _____ and State of Illinois.

I state that the elector is a citizen of the United States; that on *(date of the election)* the elector shall have resided in the State of Illinois for 30 days; that on the above date the elector shall be above the age of 18 years; that the elector is lawfully entitled to vote in such precinct at such election; that the elector is a member of the United States Service, and that in the course of the elector's duties the elector expects to be absent from the said county of elector's residence on the date of holding such election; and that the elector will have no opportunity to vote in person on that day.

I hereby make application for an official ballot or ballots to be voted by the elector in such election if the elector is absent from the said County of the elector's residence and the elector agrees that the elector shall return said ballot or ballots to the official issuing the same in sufficient time for such official to deliver said ballot or ballots to the proper polling place prior to the closing of the polls on the day of the election, or the elector shall destroy said ballot or ballots.

I hereby certify that I am the *(mother, father, sister, brother, husband, or wife)* of the said elector, and that I am of voting age. *(Strike all but one of the above that is applicable.)*

Under penalties as provided by law pursuant to Article 29 of The Election Code, the undersigned certifies that the statements set forth in this application are true and correct.

_____
(Signature)

Post office address to which ballot should be mailed:

_____
_____
_____

list required by Section 19-4 of *The Election Code*. This list must be posted at a conspicuous place in your office and must be available for public inspection. It must contain the applicant's name, street address, and precinct number (see **Form Twenty-Five** on page 44).

7.8 Folding the Ballot

You are required to fold the ballot "in the manner specified by statute for folding ballots prior to their deposit in the ballot box," as stated in Section 19-5 of *The Election Code*.

We assume that the "manner specified by statute" is that contained in Section 17-11 of *The Election Code*, which provides only that the ballot must be folded "in such a manner as to conceal the marks thereon." It seems, therefore, that if you fold the ballot so that the place where the voter is to indicate his vote is inside the ballot when folded, you will satisfy the statute.

FORM TWENTY-ONE — Application for a Ballot by an Elector Who Expects To Be Absent from the County

Application for Ballot by Elector Who Expects To Be Absent from County

To be voted at the *(school)* election in the County of _____, and State of Illinois, in the _____ precinct.

I state that I am a resident of the _____ precinct of School District No. 5, Mythical County, Illinois, residing at _____ in the City or Town of _____, County of _____, and State of Illinois; that I am lawfully entitled to vote in such precinct at the *(school)* election to be held therein on *(date)* ; that I expect to be absent from the county of my residence on the date of holding such election; and that I will have no opportunity to vote in person on that day.

I hereby make application for an official ballot or ballots to be voted by me at such election if I am absent from the county of my residence, and I agree that I shall return such ballot or ballots to the official issuing the same in sufficient time for such official to deliver such ballot or ballots to the polls on the date of the election.

Under penalties as provided by law pursuant to Article 29 of The Election Code, the undersigned certifies that the statements set forth in this application are true and correct.

_____
(Signature)

Post office address to which ballot is mailed:

_____
_____
_____

7.9 The Ballot Envelope

Now you must place the ballot in one of three types of envelopes described in Section 19-5 of *The Election Code*. The front of the envelope must contain your return address and the back must contain one of three certificates provided for in Section 19-5 of *The Election Code*. They are essentially repetitive of the language required in the application for three of the four classes of persons who can vote by absentee ballot: (a) those out of the county; (b) those physically incapacitated; and (c) those

FORM TWENTY-TWO — Application for a Ballot by an Elector Who Is a Judge of Election in a Precinct Other Than the Precinct in Which He Resides

Application for Ballot by an Elector Who Is A Judge of Election in a Precinct Other Than the Precinct in Which He Resides

To be voted at the *(school)* election in the County of _____ and State of Illinois, in the _____ precinct.

I state that I am a resident of the _____ precinct of School District No. 5, Mythical County, Illinois, residing at _____ in the City or Town of _____, County of _____ and State of Illinois; that I have lived at such address for _____ months last past; that I am lawfully entitled to vote in such precinct at a *(school)* election to be held therein on _____; that I am a judge of election in _____ precinct or the (1)* _____ ward in the City of _____ or (2)* township of _____ or (3)* city, village or incorporated town of _____ in such county at a *(general)* election to be held therein on such day; and that I will have no opportunity of voting in person on that day.

I hereby make application for an official ballot or ballots to be voted by me at such election if I serve as a judge of election in such last named precinct, and I agree that I shall return such ballot or ballots to the official issuing the same in sufficient time for such official to deliver such ballot or ballots to the proper polling place prior to the closing of the polls on the date of the election.

Under penalties as provided by law pursuant to Article 29 of The Election Code, the undersigned certifies that the statements set forth in this application are true and correct.

*Fill in either (1), (2), or (3)

_____
(Signature)

Post office address to which ballot is mailed:

_____
_____
_____

observing religious holidays. (Election judges who vote in other precincts are not provided for here. However, this is not usually a problem for reasons stated in Section 7.3 of this book.)

In **Form Twenty-Six**, we have condensed the language to be shown on the back of this envelope into one form (relying on the fact that Section 19-5 of *The Election Code* permits the language to be "substantially" that set forth in the statute.) We have done so in order to reduce the chance of error in selecting the incorrect envelope. We also have edited the language to make it applicable to a school election and have changed the reference to the penalty section.

7.10 Instructions to Absentee Voters

You also are required to enclose a printed slip giving full instructions to the absentee voter about the procedure for marking and returning the ballot. **Form Twenty-Seven** provides a reasonable compliance with the requirement for enclosing instructions to the voter.

7.11 Delivering Voted Ballots to Election Judges

When the absentee voter has returned the ballot (in the ballot envelope) to you, you then must insert it into a larger carrier envelope for delivery to the election judges prior to the closing of the polls as required by Section 19-7 of *The Election Code.*

All of the absentee ballots that you receive prior to the time that you deliver the election supplies to the precincts must be included in the initial delivery to the election judges in one carrier envelope (see **Form Twenty-Eight**). If you receive any absentee ballots after this initial delivery, but before the time that it takes to deliver them to the polling places before they close, you must place

FORM TWENTY-THREE — Application for a Ballot by a Physically Incapacitated Person

Application for Ballot by
Physically Incapacitated Person

To be voted at the *(school)* election in the County of _____ and State of Illinois, in the _____ precinct.

I state that I am a resident of the _____ precinct of School District No. 5, Mythical County, Illinois, residing at _____ in the City or Town of _____, County of _____ and State of Illinois; that I have lived at such address for _____ months last past; that I am lawfully entitled to vote in such precinct at a *(school)* election to be held therein on _____; and that I shall be physically incapable of being present at the polls of such precinct on the date of holding such election for the following reasons:

_____

_____

I hereby make application for an official ballot or ballots to be voted by me at such election if I am so physically incapacitated, and I agree that I shall return such ballot or ballots to the official issuing the same in sufficient time for such official to deliver such ballot or ballots to the proper polling place prior to the closing of the polls on the date of election.

Under penalties as provided by law pursuant to Article 29 of The Election Code, the undersigned certifies that the statements set forth in this application are true and correct.

_____
(Signature)

Post office address to which ballot is to be mailed:

_____

_____

_____

CERTIFICATE OF ATTENDING PHYSICIAN

I state that I am a physician, duly licensed to practice in the State of _____; in that state I have examined _____; and that I verily believe that he will be physically incapable of being present at the polls on the _____ day of _____ A.D. 19____ for the following reasons: _____

_____

Under penalties as provided by law pursuant to Article 29 of The Election Code, the undersigned certifies that the statements set forth in this certification are true and correct.

_____
(Signature)

_____
(Date Licensed)

CERTIFICATE OF ATTENDING CHRISTIAN SCIENCE PRACTITIONER

I state that I am an authorized Christian Science Practitioner, listed in the Christian Science Journal; that I am treating _____; and that I verily believe that he will be physically incapable of being present at the polls on the _____ day of _____, A.D. 19____, for the following reasons: _____

_____

Under penalties as provided by law pursuant to Article 29 of The Election Code, the undersigned certifies that the statements set forth in this certification are true and correct.

_____
(Authorized Christian Science Practitioner)

these ballots (in their ballot envelopes) in a similar carrier envelope and deliver it to the election judges. These rules are set out in Section 19-8 of *The Election Code.*

Section 19-8 of *The Election Code* permits you to mail ballots from your office to the precinct polling places, but it also says that they can be personally delivered. Personal delivery is not only the usual method being followed, but it is also the better because it assures that the ballots will be delivered to the election judges prior to the closing of the polls.

7.12 Absentee Ballots Received Too Late

An absentee ballot received too late to be delivered to the polls before they close should not be opened or tabulated. Section 19-8 of *The Election Code* says that you must endorse on the envelope the day and hour of receipt and then keep the envelope, unopened, until the ballots are to be destroyed. Section 9-16 of *The School Code* says that ballots must be destroyed six months after the date of the election. Of course, if there is an election contest, you must keep the ballots until the contest is finally determined.

FORM TWENTY-FOUR — Application for a Ballot by an Elector Observing a Religious Holiday

Application for Ballot by Elector
Observing Religious Holiday

To be voted at the *(school)* election in the County of _____ and State of Illinois, in the _____ precinct.

I state that I am a resident of the _____ precinct of School District No. 5, Mythical County, Illinois, residing at _____ in the City or Town of _____, County of _____ and State of Illinois; that I have lived at such address for _____ months last past; that I am lawfully entitled to vote in such precinct at a *(school)* election to be held therein on _____; and that I shall be unable to be present at the polls at such precinct on the date of holding such election because of the tenets of my religion in the observance of a religious holiday.

I hereby make application for an official ballot or ballots to be voted by me at such election if I am so unable to be present at the polls of such precinct on the date of the election because of the tenets of my religion in the observance of a religious holiday, and I agree that I shall return the ballot or ballots to the official issuing the same in sufficient time for such official to deliver the ballot or ballots to the proper polling place prior to the closing of the polls on the date of election.

Under penalties as provided by law pursuant to Article 29 of The Election Code, the undersigned certifies that the statements set forth in this application are true and correct.

_____
(Signature)

Post office address to which
ballot is to be mailed:

_____
_____
_____

7.13 Variations in Absentee Voting

There are two minor variations in the absentee voting procedure just described that you should know about.

These variations involve: (a) absentee voting by electors who have permanent physical incapacity of such a nature that it is improbable that they will be able to go to the polls, and (b) absentee voting by persons in the military service and certain other persons described in Section 20-1 of *The Election Code.*

7.13a Persons with a Permanent Physical Incapacity

Absentee voting by persons who have a permanent physical incapacity is described in Section 19-12.1 of *The Election Code.* This section provides

FORM TWENTY-FIVE — The List of Applications for Ballots Received from Absentee Voters

List of Applications for Ballots
Received from Absentee Voters

I, Robert Williams, certify that I am the Secretary of the Board of Education of School District No. 5, Mythical County, Illinois, and that in such capacity I am the officer charged with the duty of furnishing ballots for the regular election of members of the Board of Education of such School District to be held in such District on _____, 19____.

I further certify that on the dates shown below, I received applications for ballots from voters who expect that they will be unable to appear at the polling place on election day, and that immediately upon the receipt thereof, I examined, or caused to be examined, the records available in my office and determined that such applicants are lawfully entitled to vote as requested, as follows:

	Date Received	*Name*	*Street Address*	*Precinct*
1.				
2.				

(etc.)

/s/ Robert Williams
Secretary, Board of Education of School District No. 5,
Mythical County, Illinois

that such a person may obtain a disabled voter's identification card that is good for five years. The number on this card is recorded on his registration card. He can apply for an absentee ballot in the same manner already described. The language on the application must be the same as that set forth in Section 19-3 of *The Election Code* (presumably this means the language for physically handicapped voters). A card holder need not submit a supporting affidavit from a physician or Christian Science Practitioner.

Since you do not have copies of the registration cards, you must rely on the statement of the applicant that he has a disabled voter's identification card. He may make this statement in a separate letter to you. We believe that you can rely on such a statement because Section 19-12.1 of *The Election Code* states that anyone who knowingly subscribes to a false statement in connection with voting under that section is guilty of a Class A misdemeanor. The penalty is imprisonment for up to a year, or a fine of up to $1,000.[37]

7.13b Persons in the Military Service

We have shown you some of the differences in the absentee voting procedure for persons who are in the military service and certain other classes of persons defined in Section 20-1 of *The Election Code* (see Section 7.2 of this book).

Another difference is that Section 20-4 of *The Election Code* provides that the ballot must be sent to a voter in this group by air mail and that the words "Official Ballot — Via Air Mail" must be written on the ballot-return envelope between two red stripes (see Section 20-5 of *The Election Code.*)

FORM TWENTY-SIX — The Envelope for Mailing a Voted Absentee Ballot to the Secretary

(Front of Envelope)

To: Robert Williams, Secretary
Board of Education of School District No. 5
Administration Building
572 Western Avenue
Ourtown, Illinois 60995

(Back of Envelope)

STATE OF ILLINOIS)
) SS
COUNTY OF MYTHICAL)

CERTIFICATE

I state that I am a resident of the _____ precinct of School District No. 5, Mythical County, Illinois; that I have lived at such address for _____ months last past; that I am lawfully entitled to vote at the regular school election to be held in such District on _____, 19____; and that I shall be incapable of being present at the polls on the date of holding such election for one of the following reasons:

_____ I expect to be absent from the county of my residence.

_____ I shall be physically incapable of being present at the polls of such precinct.

_____ I am a judge of election in a precinct other than the precinct in which I reside and I will have no opportunity of voting in person.

_____ I will be observing a religious holiday.

I further state that I marked the enclosed ballot in secret.

Under penalties provided by law pursuant to Article 29 of The Election Code, the undersigned certifies that the statements set forth in this certification are true and correct.

_____
(Voter's Signature)

FORM TWENTY-SEVEN — Instructions to Absentee Voters

INSTRUCTIONS TO ABSENT VOTER

Please read and sign the statement contained in the Application for Ballot that was given to you by the Secretary of the Board of Education. It states the reason why you will not be able to vote at the polls on election day. If this reason is because you will be physically incapacitated, please attach the signed certificate of your attending physician or, where applicable, your Christian Science Practitioner.

When you have received the ballot and ballot envelope from the Secretary of the Board of Education, please read and sign the certificate printed on the back of the envelope. Then please mark your ballot in secret and fold it in such a way that the marks you have made are concealed inside. Please place the ballot in the ballot envelope and either deliver it personally to the Secretary of the Board of Education or mail it in the envelope provided. Please attach proper first class postage.

You are required to return this ballot to the Secretary of the Board of Education in sufficient time so that he may deliver it to your precinct polling place prior to 8:00 p.m. on April _____, 19_____.

FORM TWENTY-EIGHT — The Absentee Ballot Carrier Envelope

(Front of Envelope)

Board of Education of School District No. 5,
Mythical County, Illinois

To the Judges of Election, Precinct No. _____

This envelope contains an absent voter's ballot and must be opened only at the polls on election day immediately after said polls are closed.

However, these rules were adopted before changes in services offered by the United States Postal Service. There now is no special "Air Mail" category for domestic letters. The Postal Service sends the mail by the fastest method, whether that be by air or by surface delivery. Air mail is used for foreign letters.

Because of this change in postal service, the air mail requirements of Section 20-4 of *The Election Code* now appear to be outdated. Ballots sent to and received from military voters stationed in the country will be sent by air mail if that's the fastest way to get them to their destinations. Military voters who have APO or FPO numbers and are stationed outside the country will have their mail delivered by military air charter in most circumstances.

We believe that you now can comply with Section 20-5 of *The Election Code* by sending the ballot to a military person by regular first class mail.

One further difference in the procedure for military absentee voters is the method by which their votes can be challenged. Under Section 19-10 of *The Election Code*, if an absentee voter (non-military) is challenged and the challenge is sustained, the election judge must write on the ballot envelope the word "Rejected" and the reason for the rejection. This also is required for military absentee voters, but, under Section 20-10 of *The Election Code*, the election judges must notify the absent voter by mail that the challenge has been sustained.

FORM TWENTY-NINE —
Ballot Package Label

Board of Education of School District No. 5
Mythical County, Illinois

BALLOTS

For Election _____, 19____
For School District No. 5 Precinct No. _____
Number of Ballots Enclosed: _____

Robert Williams, Secretary
Board of Education of School District No. 5,
Mythical County, Illinois

FORM THIRTY — The Receipt for Ballots

Board of Education of School District No. 5
Mythical County, Illinois

To: Secretary
Board of Education of School District No. 5,
Mythical County, Illinois

This is to acknowledge that the judges of election in Precinct No. _____, at the election held in this school district on _____, 19____, received _____ blank ballots from the Secretary in the *(initial) (subsequent)* delivery of ballots to the polling place.

Dated: _____, 19____.

_____
Judge of Election

_____
Judge of Election

_____
Judge of Election

8. Packing the Election Kits

We're now in the last week before the election and it's time to get ready for election day. Here is where we start packing the kits for the polling places. These kits must be delivered prior to the opening of the polls.

FORM THIRTY-ONE —
The Application for Additional Ballots

Board of Education of School District No. 5
Mythical County, Illinois

Application for Additional Supply of Ballots

To: Secretary
Board of Education of School District No. 5,
Mythical County, Illinois

The Judges of Election of Precinct No. _____ of this school district, in the election held on _____, 19____, request that the Secretary provide them with an additional supply of _____ ballots, for the reason that the initial supply has been *(lost) (destroyed) (exhausted)* prior to the closing of the polls.

Dated: _____, 19____

_____
Judge of Election

_____
Judge of Election

_____
Judge of Election

The Election Code is specific about most of the documents and equipment that must be sent to the polling place. *The School Code*, however, usually only implies what must be sent. For example, Section 17-8 of *The Election Code* requires that pencils must be included in the precinct supplies, but *The School Code* doesn't mention them at all. We will provide you with a "packing list" and indicate whether *The School Code* requires the item. If it does not, but you'll need it anyway, we've shown the section of *The Election Code* that requires it.

8.1 Packaged Ballots and Receipts

The ballots must be wrapped in packages of 100 each with labels indicating the precinct to which they are to be delivered and the number of ballots contained in the package (see Section 9-8 of *The School Code*). **Form Twenty-Nine** shows the proper form for the ballot package label.

The receipt for ballots must be signed by the election judges (see Section 9-8 of *The School Code*). The proper form for this receipt is shown in **Form Thirty.**

8.2 Requesting Additional Ballots

A form for requesting additional ballots must be provided. There is no specific requirement for this in *The School Code*. However, Section 9-8 of *The School Code* requires the secretary to keep a reserve supply of blank ballots in case a precinct needs more. Section 16-5 of *The Election Code* requires a written application from the election judges for more ballots (see **Form Thirty-One**).

A receipt for additional ballots is a necessity. There is no specific provision for it in *The School Code*, but it is required by Section 16-5 of *The Election Code*. Use the receipt form shown in **Form Thirty.**

8.3 The Ballot Box

You also must have a ballot box. A ballot box is required by Section 9-14 of *The School Code*, but there are no specifications for its size or method of construction. However, Section 15-1 of *The Election Code* does contain such specifications.

8.4 Voting Booths

Voting booths are not specifically required in *The School Code*. However, Section 17-8 of *The Election Code* requires one voting booth for each 75 votes cast in that precinct in the last election. Most school districts use voting booths. A voting booth safeguards the secrecy of the ballot, and we prefer that they be used. You should discuss this matter with your school attorney if your district has not been using voting booths.

FORM THIRTY-TWO — The Judges' Oaths

Board of Education of School District No. 5
Mythical County, Illinois

OATH OF OFFICE OF ELECTION JUDGE

I do solemnly swear *(or affirm, as the case may be)*, that I will support the Constitution of the United States and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of judge of election according to the best of my ability, and that I have resided in the area constituting the voting precinct for one year next preceding this election and am entitled to vote at this election.

Dated: _____, 19____

_____
(Signature)

Subscribed and Sworn to
before me this _____ day of
_____, 19____

_____
Notary Public or Judge of Election

FORM THIRTY-THREE — The Certificate Designating a Substitute Judge

Board of Education of School District No. 5
Mythical County, Illinois

We, the undersigned, being the remaining judges of election in Precinct No. _____ of the election conducted in this school district on _____, 19____, certify as follows:

(1) That _____ was appointed to act as one of the judges of election in this precinct.

*(2) That at the time for opening the polls, _____ was not present in the polling place; or

*(3) That after the polls were opened, _____ was unable to continue the performance of his duties because *(he) (a member of his immediate family)* became ill.

(4) That, thereupon, we appointed _____ to serve as a substitute judge of the election in the place and stead of _____, and that such substitute judge of election subscribed to the oath of office prior to commencing his duties.

Dated: _____, 19____

_____
Judge of Election

_____
Judge of Election

* *Strike out inapplicable section.*

8.5 Pencils

Pencils must be used for marking ballots. Again, *The School Code* does not mention their use, but they are required by Section 17-8 of *The Election Code.*

FORM THIRTY-FOUR — Instructions to Voters

Board of Education of School District No. 5
Mythical County, Illinois

INSTRUCTIONS TO VOTERS

1) In order to vote in this election, you must be registered to vote in a general election from an address located within this school district and you must have lived in this school district for the 28 days immediately preceding this election.

2) You must sign an affidavit to vote, which the judges of election will provide.

3) One of the judges of election will give you one of each of the ballots to be voted. Each ballot must contain the initials of one of the judges on the back.

4) Without leaving the polling place, you must mark your ballot as follows:

a) Place a cross mark (X) in the square or squares preceding the name or names of the candidate or candidates of your choice; or

b) Write in the name or names of the candidate or candidates of your choice in the blank space or spaces on the ballot, and then place a cross mark (X) in the square or squares preceding the name or names of such candidates.

c) In the case of voting a ballot on a public measure, you should place a cross mark (X) in the proper square indicating the way you desire to vote on the measure.

5) Do not place any marks on the ballot other than the cross marks or the names of candidates you write in the blank spaces.

6) When you have completed marking your ballot, fold it in such a manner that you conceal the marks you have placed on it and deposit the ballot in the ballot box.

7) You may not vote, or offer to vote, any ballot other than the official ballot handed to you by the judge of election.

8) If you require assistance in voting because you cannot read English or because you have a physical disability, you must fill out an affidavit stating the reason why you need assistance. A judge of election, or a friend or relative you designate may fill out this affidavit for you. Two judges of election then will assist you in voting.

9) Your right to vote may be challenged either by a judge of election or by a legal voter at this election. In such event, you will be asked to sign an affidavit stating that you are qualified to vote in this election. You also must procure a witness who is known to the judges of election and is a resident of the District and who must sign the affidavit stating that he knows you are entitled to vote. If this witness is not known to the judges of election, another legal voter of this District who is known to the judges of election may state that the witness you offer is a resident of this District. When you have presented a properly witnessed affidavit, you will be allowed to vote.

8.6 The Judges' Oaths

Forms for the judges' oaths are required by Section 9-8 of *The School Code* (see **Form Thirty-Two**).

8.7 Designating Substitute Judges

Certificates designating substitute judges of election should be provided. Section 9-8 of *The School Code* provides that election judges may appoint substitutes if the originally appointed judges are not present when the polls open.

Both Section 9-8 of *The School Code* and Sections 13-7 and 14-6 of *The Election Code* deal with the situation in which one of the election judges does not show up when the polls are first opened. However, only *The Election Code* makes a provision for a judge who must leave after the polls are opened. The provision is limited to a case in which either a judge or a member of his immediate family becomes ill. The most reasonable construction is to read both *The School Code* and *The Election Code* together and to provide for "the after-the-polls-open case" in a school election, too.

No specific form for the designation of a substitute judge is provided in *The School Code*. Because Section 17-22.1 of *The Election Code* requires the judges to fill out a certificate when a substitute judge is appointed, you should require that the judges do the same in a school election in order

FORM THIRTY-FIVE — The Affidavit to Vote

Board of Education of School District No. 5
Mythical County, Illinois

AFFIDAVIT TO VOTE

Each of the undersigned severally states on oath or affirmation that his or her name and address are correctly shown below; that he or she resides in School District No. 5, Mythical County, Illinois, and is registered and entitled to vote in general elections from such residence; and that he or she is a qualified voter.

Voter's Signature *Street Address* *City or Village*

1. _____
2. _____
3. _____

(Etc.)

Subscribed and Sworn to before me this _____ day of _____, 19____.

_____
Judge of Election
Precinct No. _____

FORM THIRTY-SIX — The Poll Book

Board of Education of School District No. 5
Mythical County, Illinois

POLL BOOK

Number *Name of Voter*

_____

_____

(Etc.)

_____
Judge of Election
Precinct No. _____

FORM THIRTY-SEVEN — The Military Affidavit

MILITARY AFFIDAVIT

STATE OF ILLINOIS)
) SS
COUNTY OF MYTHICAL)

Board of Education of School District No. 5
Mythical County, Illinois

Precinct No. _____

I, _____, do solemnly swear *(or affirm)* that I am a citizen of the United States of the age of 18 years or over, and that, within the past 60 days prior to the date of this election at which I am applying to vote, I have been engaged in the *(military) (naval)* service of the United States; that I am qualified to vote under and by virtue of the Constitution and laws of the State of Illinois; that I am a legally qualified voter of this precinct except that I have, because of such service, been unable to register as a voter; that I now reside at *(insert street and number, if any)* in this precinct; and that I have maintained a legal residence in this State for 30 days next preceding this election.

_____
(Signature)

Subscribed and sworn to before me
this _____ day of _____, 19____

_____
Judge of Election

FORM THIRTY-EIGHT — The Challenged Voter's Affidavit

STATE OF ILLINOIS)
) SS
COUNTY OF MYTHICAL)

Board of Education of School District No. 5
Mythical County, Illinois

AFFIDAVIT OF CHALLENGED VOTER

I, *(Name of Challenged Voter)*, do solemnly swear *(or affirm)* that I am a citizen of the United States; that I am 18 years of age or older; that I have resided in this election district 30 days next preceding this election; that I have not voted at this election; that I am a duly qualified voter in every respect; that I now reside at *(Street Address)* in the City or Village of *(Name of Municipality)*.

(1) And that I changed my residence to the above address from *(Street Address)* in the City or Village of *(Name of Municipality)*, both of which are in this District. [1]

(2) That I changed my name from *(Former Name)* to that which I have signed below. [2]

So help me God *(or "This I solemnly and sincerely affirm," as the case may be)*.

_____
(Signature of Challenged Voter)

Subscribed and sworn to before me this
_____ day of _____, A.D. 19____.

_____
(Signature of Officer Administering Oath)

_____
(Capacity)

1. Fill in the blank ONLY if you have moved within 2 years.
2. Fill in the blank ONLY if you have changed your name within 2 years.

to keep a record of the proceedings. A certificate for this purpose is shown in **Form Thirty-Three.**

8.8 Instructions to Voters

Voter instruction cards are useful. There is no requirement for them in *The School Code*, although detailed requirements are contained in Section 16-9 of *The Election Code*. If you decide to use voter instruction cards, **Form Thirty-Four** may be helpful.

8.9 Penalty Notice

A poster setting forth penalties for election violations must be posted in each polling place (see Section 9-23 of *The School Code*). The penalties are set forth in Article 29 of *The Election Code*. Posters for school elections must list 16 of the 19 sections from Article 29, along with the penalty provisions from Section 9-23 of *The School Code*. Consult your attorney for the exact language that must be printed on this poster.

8.10 Specimen Ballots

A specimen ballot for voters is helpful. There is no *School Code* requirement for this, but Section 17-28 of *The Election Code* does require it. As with voters' instruction cards, a specimen ballot is an additional aid to the voter.

8.11 The American Flag and Precinct Designation Signs

The American flag is not required either by

The School Code or *The Election Code*. But you may want to have a flag flying at your polling places.

Precinct designation signs are not required, but are very helpful to voters.

8.12 The Voter Application

Sections 9-9 and 9-14 of *The School Code* provide that, before the voter is given a ballot, he must make out an application for the ballot in the form of an affidavit (see **Form Thirty-Five**).

8.13 The Poll Book

A poll book is required by Section 9-14 of *The School Code* (see **Form Thirty-Six**). It's a record in which the judges enter the voter's name and the number of the order in which he voted.

However, since the voter also must fill out an application for a ballot, Section 9-14 of *The School Code* says that the poll book (or poll list) need not be used if the applications are numbered. However, there are two important prerequisites for using this alternate method:

1) **The resolution** calling the election must state that this is to be done; and

2) **The election judges** must sign their oaths of office on separate pieces of paper.

8.14 Military Affidavits

Military affidavits should be available. There is no specific requirement in *The School Code* for this affidavit. However, Section 9-4 of *The School Code* requires that voters must be registered. One of the exemptions from registration is that the voter was in the military service at any time during the 60-day period preceding the election.

Section 17-9 of *The Election Code* provides that such a voter must complete an affidavit at the polls in which he states that he was in the military service during the 60-day period. Since the exemption applies to school elections, this form should be used (see **Form Thirty-Seven**).

8.15 Challenged Voters' Affidavits

Challenged voters' affidavits are required. Section 9-14 of *The School Code* incorporates by reference the challenge procedure contained in Section 17-10 of *The Election Code*. The latter provides a form that is to be used by a voter whose right to vote is challenged at the polls. In substance, it states that he actually is entitled to vote and has attached to it a statement from another qualified voter attesting to the voting qualifications of the challenged voter. When the form is completed by the challenged voter he can vote (see **Forms Thirty-Eight and Thirty-Nine**).

8.16 The Disabled Voters' Oaths

Disabled voters' oaths should be available.

FORM THIRTY-NINE —
Affidavit of Challenged Voter's Witness

STATE OF ILLINOIS)
) SS
COUNTY OF MYTHICAL)

AFFIDAVIT OF CHALLENGED VOTER'S WITNESS

I do solemnly swear (*or affirm*) that I am a resident of this election precinct (*or district*) and am entitled to vote at this election, and am well acquainted with the person whose vote is now offered; and that he is an actual and bona fide resident of this election precinct (*or district*) and has resided herein 30 days next preceding this election.

_____
(Signature of Challenged Voter's Witness)

Subscribed and sworn to before me
this _____ day of _____, A.D. 19_____.

_____
(Signature of Officer Administering Oath)

_____
(Capacity)

FORM FORTY —
The Disabled Voter's Affidavit

STATE OF ILLINOIS)
) SS
COUNTY OF MYTHICAL)

Board of Education of School District No. 5
Mythical County, Illinois

DISABLED VOTER'S AFFIDAVIT

The undersigned states, on oath, that he is permanently physically disabled for the following reason:

_____ That he has the following physical disability:
_____; or

_____ That he is blind.

_____ Or, the undersigned states that he cannot read the English language.

The undersigned requests the assistance of a friend or relative or of two judges of election in the marking of his ballot.

_____
(Signature)

Subscribed and sworn to before me
this _____ day of _____, 19_____.

Judge of Election

FORM FORTY-ONE — The Judges' Certificate of Results

Board of Education of School District No. 5
Mythical County, Illinois

JUDGES' CERTIFICATE OF VOTES RECEIVED

We, the undersigned, being the Judges of Election for School District No. 5, Mythical County, Illinois, in Precinct No. _____, in the election held on April _____, 19_____, to elect members of the Board of Education of such District, certify that we have canvassed the votes polled in such precinct at such election and that, as a result of such canvass, we hereby certify that the candidates for such office listed below received the number of votes set opposite their names as follows:

Candidate	*No. of Votes Received*

Dated, this _____ day of _____, 19_____.

_____
Judge of Election

_____
Judge of Election

_____
Judge of Election

FORM FORTY-TWO — Ballot Reconciliation

Board of Education of School District No. 5
Mythical County, Illinois

BALLOT RECONCILIATION

Election April _____, 19_____

Precinct No. _____

Ballots Received From Secretary

Number of blank ballots received in initial delivery	_____
Number of additional blank ballots requested and received	_____
Number of absentee ballots received	_____
Total number of ballots received	_____

Ballots Returned To Secretary

Number of voted ballots counted and returned	_____
Number of defective ballots, including spoiled ballots (not counted) returned	_____
Number of objected-to ballots (not counted) returned	_____
Number of blank ballots (not voted) returned	_____
Total number of ballots returned	_____

Dated, this _____ day of _____, 19_____.

_____
Judge of Election

_____
Judge of Election

_____
Judge of Election

Section 9-14 of *The School Code* provides that a voter who declares on oath that he can't read English, has a physical incapacity that prevents him from marking his ballot, or is blind can be assisted in marking his ballot, either by two election judges or by a friend or relative of his own selection. The requirements of the affidavit also are set forth in Section 9-14 of *The School Code* (see **Form Forty**).

8.17 Absentee Ballots in Carrier Envelopes

Absentee ballots in carrier envelopes must be taken to the polling place. Section 9-14 of *The School Code* and Section 19-8 of *The Election Code* (which is incorporated into *The School Code* by reference) both require that you deliver the absentee ballots that you have received to the election judges. See **Section 7.11** of this book for further discussion.

8.18 The Tally Sheet

A tally sheet is required by Section 9-15 of *The School Code*. Section 17-8 of *The Election Code* says that three tally sheets must be prepared by the election judges, but Section 9-15 of *The School Code* refers to this document in the singular and calls it a "tally list." Include at least two tally sheets for a school election. They can be used by the election judges as a cross-check.

8.19 The Judges' Certificate of Results

Section 9-16 of *The School Code* requires that the election judges include in their returns a certificate of the results of their precinct canvass (see **Form Forty-One**).

8.20 Ballot Reconciliation

The election judges must complete a form to account for all of the ballots. (See Chapter 16 of this book.) A form is suggested in **Form Forty-Two.**

8.21 Six Types of Envelopes

Six different types of envelopes, each appropriately marked, should be included so that the election judges can segregate the ballots, the voters' affidavits, and the tally sheet. They include:

1) An envelope for the voted ballots that have been counted for the candidates.

2) **An envelope for** objected-to ballots as required by Section 9-15 of *The School Code.*

3) **An envelope for** ballots that were spoiled and returned by voters for replacement as required by Section 17-16 of *The Election Code.*

4) **An envelope for** defective ballots for use after the polls close, as required by Section 17-16 of *The Election Code.* Refer to **Chapter 16** of this book for a discussion about the differences between a defective and an objected-to ballot.

5) **An envelope for** voters' affidavits.

6) **An envelope for** the judges' certificate of results and the tally sheet.

8.22 Wrapping Supplies

Include cord, wrapping paper, and transparent adhesive tape for wrapping the voted ballots and sealing the ballot envelopes. There is no specific requirement in *The School Code* for these items, but there is in Section 18-10 of *The Election Code.* These materials will help you secure the voted ballots.

8.23 A Canvass Bag

A canvass bag is convenient for carrying the ballots after they have been counted. *The School Code* doesn't require it, but Section 17-16 of *The Election Code* does. However, the election judges *must not put the certificate of results or the tally sheet into this bag,* just the ballots.

8.24 The Secretary's Receipt

Section 17-16 of *The Election Code* requires that a receipt must be given to the election judges when they return the election materials, but there is no parallel requirement in *The School Code.* However, since Section 9-16 of *The School Code* imposes a statutory duty on the election judges to return the poll book, tally list, and ballots to the secretary within five days after the election, they may feel comfortable if they have written evidence of their compliance (see **Form Forty-Three**).

FORM FORTY-THREE — The Secretary's Receipt for Returned Materials

Board of Education of School District No. 5
Mythical County, Illinois

RECEIPT

To: The Judges of Election, School District No. 5
Precinct No. _____
Election held April ____, 19____.

I acknowledge receipt of the following on this _____ day of April, 19_____:

1 Envelope containing _____ ballots counted
1 Envelope containing _____ defective ballots
1 Envelope containing _____ objected-to ballots
1 Envelope containing _____ spoiled and not-voted ballots
1 Envelope containing _____ unused ballots
1 Envelope containing _____ sheets of voters' affidavits
1 Judges' Certificate of Votes Received
1 Tally Sheet
_____ Separate Judges' Oaths
1 Ballot Box
_____ Certificates of Challengers or Watchers
Miscellaneous supplies

_____
Secretary

9. Election Day

9.1 General Duties

Now it's election day. For the most part, the activities today will be conducted by the election judges at the polling places. The secretary should be available at the school administration office at least one half hour before the opening of the polls and for however long it will take the judges after the polls close to make their returns to you. True, Section 9-16 of *The School Code* provides that the judges have up to five days after the polls close to make their returns to you, but they probably will do so on election night as soon as they have completed their work.

As part of your general administrative work today, don't forget that, if you receive any more absentee ballots, you must deliver them to the polls before closing. Also, if precinct judges call for more supplies, you must see that they are delivered. It's a good idea, too, to have the telephone number of your school attorney handy in case you are asked questions about procedure with which you may not be familiar.

9.2 Police Assistance at the Polls

Although it is unlikely that the election judges in a precinct polling place will need police assistance to perform their duties, you should be ready to call upon the sheriff and the local police if the need arises.

Key Concept Thirteen — Peace Officers

In *United States v. Kasper*, the federal court upheld instructions by the Chicago Board of Election Commissioners to election judges that a Chicago policeman, a deputy sheriff, an F.B.I. agent, or any other "duly qualified law enforcement officer" were the only law-enforcing officials, outside of the election judges themselves, who could act in the polling place. These instructions further told the election judges not to permit "so-called peace officers" to interfere in the election process.[40]

Election judges are public officers charged with the conduct of the election in the polling place (see Sections 9-8 and 9-14 of *The School Code* and Section 18-7 of *The Election Code*). A person who fails to obey an order of an election judge who is performing his duties at the polls commits a Class A misdemeanor (see Section 9-23 of *The School Code* and Section 29-11 of *The Election Code*).

The sheriff is a conservator of the peace in his county and as such is required to "prevent crime."[38] Local police also are conservators of the peace. It is likely that the municipal authorities have specifically directed them to maintain order at elections held in the municipality.[39]

The Election Code (but not *The School Code*) provides that a board of election commissioners may "demand" that the chief of police or the sheriff provide police officers to attend the polls on election day (see Section 11-4 of *The Election Code*). Although you cannot "demand" the full-time attendance of a policeman at a school election, you probably can get one to a polling place in a hurry if necessary. (See **Key Concept Thirteen — Peace Officers**).

9.3 Receiving the Judges' Returns

When the returns come in, be sure that the tally sheets and the judges' certificates are separate from the ballot bags. If the judges have put them in the ballot bags, please ask the judges (**don't do it yourself!**) to open up the bags and take the tally sheets and certificates out. The reason why the judges must do this and not the secretary is that they are in charge of the ballots at the polling place. The bag was stuffed at the polling place and, by their error, the certificates and tally sheets were placed in it. The only time you can reach into the bag is when a recount is being properly conducted or if you have been instructed to do so as part of an election contest in court.

10. Canvassing the Vote

10.1 The School Board Must Meet

Within 10 days after the election, the board of education must convene, conduct its canvass of the precinct returns, and declare the results of the election (see Section 9-18 of *The School Code*). If there is a regularly scheduled meeting of the school board during this 10-day period, the canvass can be scheduled as part of the agenda for that meeting. However, if no regular meeting is scheduled, you must call a special meeting. Be sure that you follow the procedure set forth in Section 10-16 of *The School Code* and that you give the notice required by Section 2.02 of *The Open Meetings Act*.[41]

10.2 The Procedure for the Canvass

Because formal action of the board of education is required, the canvass must be done at a properly convened meeting. The secretary should bring to the meeting the tally sheets and the election judges' certificates of results. Since what will occur here does not involve the ballots, they should be left in the vault.

The entire board of education should participate in the canvass. Some boards tend to assign a sub-committee or the secretary, the business manager, and the school attorney to perform this task. We believe, however, that it is better for the entire board to do the canvassing.

Hand the tally sheets to the board members one precinct at a time. Then read from the judges' certificates of results the totals the election judges reported that each candidate received. One or more of the board members should be asked to keep a running total by candidate and by precinct.

If there is any difference between the totals shown by the election judges and those developed

FORM FORTY-FOUR — The Resolution Declaring the Results of the Election

RESOLUTION DECLARING RESULTS OF ELECTION

WHEREAS, on the _____ day of April, 19_____, there was held in and for School District No. 5, Mythical County, Illinois, an election for the purpose of electing two Members of the Board of Education of such District for full terms of three years each, and one Member to fill an unexpired term of two years; and,

WHEREAS, the said election has been regularly called and held as provided by law, and the returns of said election, including the tally sheets, poll records, certificates of results, and other returns of said election have been filed with the Secretary of such Board, and the returns are now before the Board of Education of such District, and the said Board is familiar therewith;

NOW, THEREFORE, Be It Resolved By The Board of Education of School District No. 5, Mythical County, Illinois, as follows:

Section 1: The election held on the _____ day of April, 19____, was held in all respects as provided by law. Notice of said election was given by publishing the notice once, on March _____, 19_____, in the *Ourtown Daily News*, which newspaper is published in the Village of Ourtown, and within School District No. 5 (or, in the *Mount Williams Times*, being a newspaper not published in School District No. 5, but having general circulation within such District; or there being no newspaper either published in School District No. 5, or having a general circulation within such District, notice was published by posting a copy thereof in the following prominent locations within such District: (1) School District No. 5 administrative office bulletin board; (2) South Mythical County Fire Protection District Fire Station No. 3; *and so on, but make sure there were 10 such places)* which date was at least 10 days prior to the date of the election.

Section 2: The judges appointed by this Board were duly qualified to fill such offices in each of the precincts, and were duly sworn to perform their duties prior to the commencement of the said election, and each subscribed to his oath severally on separate blanks; and, prior to the election, this Board provided by resolution that the affidavits to vote required by Section 9-9 of The School Code were to be numbered and were to be used in lieu of the poll list and poll book.

Section 3: The returns of said election have been duly canvassed by said judges and were filed with the Secretary.

Section 4: The Board finds from a canvass of the returns of said election that the following votes were cast in each of the said precincts in favor of the following persons at said election:

Precinct No. 1

(a) Member for full term of three years:

Frank Cavendish	754
Helen Vincent	703
William Barton	625
Marianne O'Hara	241
David Turner	108
G. S. (Smokey) Ramone	72
Mary Phillips	1
Carl Heinrich	1

(b) Member to fill unexpired term of two years:

Richard Greenfield	739

continued next page

by the board of education, the process should be repeated to determine which of the totals is correct. If the board of education finally arrives at a total different from that found by the judges, and the repeat process shows that the board's total is correct, the board's figure is the one that must be used.

A good form that can be used for this purpose is a copy of the resolution recommended in **Form Forty-Four** with blanks left for the total votes. When the final totals have been approved by the board of education, the original of the resolution can be prepared from this working copy.

10.3 Declaring the Results

The resolution declaring the results of the election should do these things:

1) Recite that the election was held, its date, and the board members (by length of term) that were to be elected in it.

2) State that the election was regularly called and conducted as provided by law. (If it was not regularly called and conducted as provided by law, saying so will not change the invalidity of the election.) The purpose of this statement is to set forth the board's finding of fact that it was so regularly called and that it was so properly conducted. This statement reinforces the presumption that these facts are correct. In then becomes the burden of someone who wishes to contest the validity of the election to show that is was not regularly called or that it was not conducted as provided by law.

3) State that the returns by the election judges were made to the secretary and that they were displayed to the board of education and examined by it.

4) State that the notice of election was published, giving the details of publication.

Form Forty-Four continued

John House	638
Bertha Small	107
Catherine Kennedy	1
Paul Wilson	1

(and so on for each precinct)

Section 5: The Board finds that the following named persons received the number of votes set opposite their names for the following offices:

(a) Member for full term of three years:

Frank Cavendish	2,730
Helen Vincent	2,592
William Barton	2,499
Marianne O'Hara	1,720
David Turner	562
G. S. (Smokey) Ramone	269
Mary Phillips	1
Carl Heinrich	1
Catherine Kennedy	1
Paul Wilson	1
Howard Grant	1

(b) Member to fill unexpired term of two years:

Richard Greenfield	2,806
John House	2,475
Bertha Small	526
Catherine Kennedy	1
Paul Wilson	1
George Allport	1

Section 6: The Board finds from a canvass of the returns of said election that the following total number of votes was cast in each of the said precincts, and that there were the following total number of blank, spoiled, defective, and objected-to ballots in each precinct:

Precinct	*Total Number of Ballots Cast*	*Objected-To Ballots*
1	1,409	58
2	1,293	43
3	1,354	47
4	1,382	59
Total	5,438	207

THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 5, MYTHICAL COUNTY, ILLINOIS, HEREBY PROCLAIMS AND DECLARES:

Frank Cavendish to be elected a member of such Board for a full term of three years;

Helen Vincent to be elected a member of such Board for a full term of three years;

Richard Greenfield to be elected a member of such Board to fill an unexpired term of two years.

ADOPTED this _____ day of April, 19____.

AYES: Daniels
Johnson
Cavendish
Williams
Mitgle[illegible]er
Barton

NAYS: None

ABSENT: Carlton

/s/ Robert Daniels
Robert Daniels, President
Board of Education of School District
No. 5, Mythical County, Illinois

(SEAL)

ATTEST:

/s/ Robert Williams
Robert Williams, Secretary
Board of Education of School District
No. 5, Mythical County, Illinois

5) Recite that the judges were qualified and sworn prior to commencing their duties.

6) State the number of votes each candidate received, by precinct.

7) State the total number of votes each candidate received in all precincts.

8) State the total number of votes cast in each precinct and the total number of blank, spoiled, defective, and objected-to ballots returned from each precinct.

9) Proclaim the winners elected to the offices for which they were candidates. See Form Forty-Four.

10.4 Other Election Problems

After the board of education adopts the canvass and declaration resolution, its next order of business is to seat the new members and then to elect a president and secretary. However, the election procedure is not over yet. What happens if there was a tie vote? What happens if one of the candidates files for a discovery recount? What happens if someone files an election contest petition in court?

We'll discuss the procedures for tied votes and discovery recounts next. The procedure for handling an election contest is reviewed in Chapter 23 of this book. It is addressed to your school attorney, but the secretary should be familiar with it, too.

10.5 The Tied Vote

Assume that your neighboring district to the

FORM FORTY-FIVE — The Resolution Directing Candidates with Tied Votes To Appear Before the Secretary

Resolution Directing Candidates with Tied Votes to Appear Before the Secretary to Have the Winner Determined by Lot

Board of Education of Community Unit School District No. 275, Apple and Peach Counties, Illinois

WHEREAS, heretofore on April ____, 19____, the Board of Education of Community Unit School District No. 275, Apple and Peach Counties, Illinois, conducted a canvass of the results of the election for members of such Board held in the District on April _____, 19____, and, by such resolution declared the results of such canvass; and,

WHEREAS, in such resolution, the Board found and declared that Michael Gerrity and Howard Prince, each of whom is a candidate for member of such Board to serve a full term of three years, each received 2,674 votes, such number being the second highest number of votes received for any candidate for such office in such election, and the Board therefore found and declared such persons to be tied candidates for such office; and,

WHEREAS, Section 9-19 of The School Code provides that, in the case of ties, the parties shall be notified to appear before the Board and the Secretary, and the Secretary shall determine by lot which of them is to be elected; now, therefore,

BE IT RESOLVED by the Board of Education of Community Unit School District No. 275, Apple and Peach Counties, Illinois as follows:

Section 1: The Secretary is hereby directed to notify Michael Gerrity and Howard Prince to appear before this Board and the Secretary thereof at 8 p.m., on April _____, 19____, in the District's Administrative Conference Room, 628 West Victoria Boulevard, Mount William, Illinois, for the purpose of determining by lot which of them is to be elected to the office of member of this Board for a full term.

Section 2: When both candidates have appeared at the time and place aforesaid, the Secretary shall write the names of each on a separate sheet of paper and show each sheet to each candidate. Thereupon, the Secretary shall fold the sheets in such manner that the names cannot be seen from the outside when folded and shall place the folded sheets into a box. The Secretary shall then designate one member of the Board, in his sole discretion, to hold the box over his head in such manner that he cannot see the contents thereof. Such Board member then shall shake the box to ensure random placement of the pieces of paper inside. The Secretary, without looking into the box, then shall reach into it and withdraw one of such pieces of paper. The Secretary thereupon shall announce in an audible tone the name appearing on the piece of paper.

Section 3: The Board thereupon shall consider a resolution declaring the person whose name was selected as provided in Section 2 above to be elected to the office of member of this Board for the full term of three years.

Adopted this _____ day of _____, 19____

AYES: Francis
Lawton
Brown
Dawson
Hinman
Smith
Jackson

NAYS: None

ABSENT: None

/s/ Sarah Francis

Sarah Francis, President
Board of Education of Community Unit School District No. 275, Apple and Peach Counties, Illinois

(SEAL)

ATTEST:

/s/ John Jackson

John Jackson, Secretary
Board of Education of Community Unit School District No. 275, Apple and Peach Counties, Illinois

west, Community Unit School District No. 275, had a tie vote for one of its full-term seats. Section 9-19 of *The School Code* says that the board must notify both candidates to appear before it. Then the secretary must determine by lot which is to be declared elected.

"By lot" is not clearly defined in the Illinois statutes. No Illinois case defines the term. Several out-of-state cases, however, define it to mean selection wholly by chance and by a random method.[42]

The term is used in *The Election Code* without definition in two cases. In Section 22-12 the procedure is left to be decided by the canvassing board in a municipality under a board of election commissioners. In Section 23-27 the court is to decide in the election contest case. But, in other sections of *The Election Code* in which ties are directed to be determined by lot, there is no guidance about what "by lot" means (Sections 7-59, 21-2, 22-3, and 22-4 of *The Election Code*).

Because there is no guidance in Section 9-19 of *The School Code* either, we suggest that the board of education decide upon any fair means of selecting one candidate's name, wholly by chance and in a random manner, and without participation by the candidates. The statute says that the secretary must "determine" (meaning that you are to do the physical act that arrives at the result) who is the winner. It's a good time to get the agreement of both potential winners before the "determination by lot" so there won't be any question later about the procedure used.

If there is an argument about procedure, rely on Section 8 of *The Juror's Act*.[43] A detailed procedure is described in this statute for drawing names from a "box containing the names which has been well shaken." A court probably would not overturn the selection of a candidate by this method because it is specifically sanctioned in *The Juror's Act*. Also see *Mann v. Powell*, where the court ordered names placed on the ballot in a "drawn by lot" manner.[44]

Assume that, in Community Unit School District No. 275, Michael Gerrity and Howard Prince each received 2,674 votes for the three year seat for which they were running. The resolution declaring the results of the canvass should be similar to the one in **Form Forty-Four**, except that, in the "proclaims and declares" section, the following entry should appear:

> "Michael Gerrity and Howard Prince, each having received 2,674 votes as candidates for member of such Board for a full term of three years, are declared to be tied."

The board then should issue a resolution directing Gerrity and Prince to appear before the secretary (see **Forms Forty-Five and Forty-Six**). This could reasonably be done at the same meeting of the board if the two candidates are present at the meeting, but should occur a short time thereafter if they are not. The resolution also should direct the secretary to determine by lot which is the winning candidate. When the lot has been determined, another resolution should be adopted declaring the winner (see **Form Forty-Seven** on page 58).

FORM FORTY-SIX — Notice by the Secretary To Appear for Determination of a Successful Candidate by Lot

Mr. Michael Gerrity
33 South Grand Street
Mt. William, Illinois 69320

Mr. Howard Prince
Route 6, Box 39
Mt. William, Illinois 69320

Gentlemen:

This is to notify you that, on April _____, 19_____, the Board of Education of Community Unit School District No. 275, Apple and Peach Counties, Illinois, conducted a canvass of the results of the election for members of such Board held on April _____, 19_____, and found and declared thereafter that each of you received 2,674 votes for the office of member of such Board for the full term of three years.

The Board thereafter directed me to notify you to appear before the Board and me at 8 p.m., on April _____, 19_____ in the Administrative Conference Room, 628 West Victoria Boulevard, Mount William, Illinois, at which time I will determine by lot which of you is to be declared elected to such office.

A copy of both resolutions is enclosed for your convenience.

Sincerely yours,

/s/ John Jackson

John Jackson, Secretary
Board of Education of Community
Unit School District No. 275,
Apple and Peach Counties, Illinois

Certified Mail
Return Receipt Requested

FORM FORTY-SEVEN — The Resolution Declaring the Result of the Determination by Lot

Resolution Declaring Results of Determination by Lot of Candidate

Board of Education of Community Unit School District No. 275, Apple and Peach Counties, Illinois

WHEREAS, pursuant to Resolution adopted April _____, 19____, a drawing by lot was conducted beginning at 8 p.m., on April _____, 19____, in the District Administration Conference Room, 628 West Victoria Boulevard, Mount William, Illinois, to determine whether Michael Gerrity or Howard Prince tied candidates for the office of member of such Board for the full term of three years, shall be elected; and,

WHEREAS, prior to the determination by lot, each of such candidates orally informed the Board that he agreed to the procedure for such drawing contained in the aforesaid Resolution; and

WHEREAS, the drawing by lot was conducted in the manner set forth in the aforesaid Resolution; now, therefore,

BE IT RESOLVED by the Board of Education of Community Unit School District No. 275, Apple and Peach Counties, Illinois, as follows:

SECTION 1: The Board finds and declares as follows:

(a) Heretofore, on _____, 19____, the Secretary served written notice upon Michael Gerrity and Howard Prince to appear before this Board and its Secretary at 8 p.m., on April _____, 19____, in the District Administration Conference Room, 628 West Victoria Boulevard, Mount William, Illinois, at which time and place the Secretary would determine by lot which of such candidates is elected to fill the office of member of this Board for the full term of three years.

(b) At the time and place aforesaid, Michael Gerrity and Howard Prince appeared before this Board and its Secretary, and each orally informed the Board that each agreed to the procedure for determination of the successful candidate by lot as set forth in the Resolution adopted by this Board on April _____, 19____.

(c) The Secretary thereafter conducted the determination by lot in the manner set forth in such Resolution.

(d) The Secretary drew the piece of paper containing Michael Gerrity's name.

SECTION 2: The Board therefore hereby proclaims and declares Michael Gerrity to be elected to the office of member of this Board for the full term of three years.

ADOPTED this _____ day of April, 19____.

AYES: Francis
Lawton
Brown
Dawson
Hinman
Smith
Jackson

NAYS: None

ABSENT: None

/s/ Sarah Francis

Sarah Francis, President
Board of Education of Community
Unit School District No. 275,
Apple and Peach Counties, Illinois

(SEAL)

ATTEST:

/s/ John Jackson

John Jackson, Secretary
Board of Education of Community
Unit School District No. 275,
Apple and Peach Counties, Illinois

11. The Recount

11.1 Initiating a Discovery Recount

Let's review the procedure for handling a discovery recount. Assume that William Barton once was on your board. His term was up and he ran for reelection. The contest was close, but Barton received 2,499 votes and his rival, Helen Vincent, received 2,592. The board declared Helen Vincent to be elected.

Barton, however, thinks that the judges in Precinct No. 3, through either inadvertence or lack of knowledge, may not have counted the votes correctly. Barton is entitled to a discovery recount because he received at least 95 percent of the vote for any successful candidate for the same office, provided that he follows the procedure set forth in Section 9-20 of *The School Code*. An attorney correctly advises Barton that even if the discovery recount shows that Barton did receive more votes than Ms. Vincent, she is still the elected candidate. Only an election contest will unseat her.

But Barton wants the discovery recount anyway. His first step is to file with the "canvassing board" a petition for a recount. The canvassing board is the board of education. **Form Forty-Eight** on page 60 provides a suggested form for the petition.

11.2 The Fee for a Discovery Recount

Section 9-20 of *The School Code* requires that the petition for a recount must be filed with the board not later than five days after the date that the board adopts its resolution declaring the results of its canvass and proclaiming the winners in the election. The petition also must be accompanied by payment of $5.00 for each precinct for which the recount is requested.

It is likely that $5.00 per precinct will not pay your costs of conducting the recount. But the legislature has determined that recounts should be easy for candidates to obtain in order to ensure that elections are conducted properly. A candidate who wants a recount should pay part of the cost, but not all. When you are budgeting for elections, keep in mind the fact that you may have additional costs for post-election events such as this.

11.3 Authorizing a Discovery Recount

When you receive the petition for a recount, the board of education should adopt a resolution authorizing the recount to be conducted (see **Form Forty-Nine**). Section 9-20 of *The School Code* does not contain a time limit within which this recount must be conducted, but, in order to be fair, it should be conducted within a reasonable time. You are being fair not only to the petitioner (who has 30 days within which to decide if he's going to file an election contest, prepare the pleadings, and get them on file), but you also are being fair to yourself by avoiding a charge later that you deliberately interfered with the petitioner by arbitrarily delaying the recount.

If you call a special meeting of the board to adopt the authorizing resolution, don't forget the procedure required by Section 10-6 of *The School Code* and the notice required by Section 2.02 of *The Open Meetings Act*.[45]

11.4 The Recount Procedure

Here is a suggested recount procedure:

1) **Arrange the recount** clerks in groups of three around a table. Separate them far enough away from each other so that, when they start counting out loud, they won't disturb each other. But keep them all in the same room.

2) **Give two clerks** in each group one blank tally sheet each. Ask them to write the names of the candidates in the left-hand columns of these tally sheets in the order in which they appear on the ballot.

3) **Give each team** the following for one precinct:

- The ballot bag containing the ballots. (Make sure it is still sealed when you hand it to them.)
- The voters' affidavits.
- A blank certificate of results form (see **Form Forty-One** on page 51).

4) **Have each team** select one person who will be the "caller;" the other two will be the "markers."

5) **Ask one member** of the team to open the bag and take out the ballots. Ask the team members to sort all ballots with the candidates' names face up. Make sure that only the ballots that the election judges have segregated as "voted and counted" ballots are handled at this time. Don't open the "defective and objected-to" ballots envelope yet.

6) **When all the** "voted and counted" ballots have been sorted, ask the team to count them. Mark this number down.

FORM FORTY-EIGHT —
The Petition for a Discovery Recount

STATE OF ILLINOIS)
) SS
COUNTY OF MYTHICAL)

PETITION FOR DISCOVERY RECOUNT

To: The Board of Education of School District No. 5
Mythical County, Illinois

The undersigned hereby petitions that a recount of the ballots cast in Precincts No. 1, No. 2, No. 3, and No. 4, in the election for members of the Board of Education of School District No. 5, Mythical County, Illinois, held in such District on April _____ 19____, and in support thereof states as follows:

(1) The Board of Education heretofore on April _____, 19____, canvassed the results of said election and found that the candidates received the following number of votes:

Candidate	*Number of Votes Received*
(a) Member for full term of three years:	
Frank Cavendish	2,730
Helen Vincent	2,592
William Barton	2,499
Marianne O'Hara	1,720
David Turner	562
G. S. (Smokey) Ramone	269
Mary Phillips	1
Carl Heinrich	1
Catherine Kennedy	1
Paul Wilson	1
Howard Grant	1
(b) Member to fill unexpired term for two years:	
Richard Greenfield	2,806
Marianne O'Hara	2,475
David Turner	526
Catherine Kennedy	1
Paul Wilson	1
George Allport	1

(2) Immediately thereafter, on April _____, 19____, the Board of Education declared the following named persons were elected as members of such Board:

(a) Members to serve the full term of three years:
Frank Cavendish
Helen Vincent

(b) Member to fill unexpired term of two years:
Richard Greenfield

(3) The undersigned, having received 2,499 votes, received at least 95 percent of the number of votes cast for Helen Vincent, being 2,592 votes, and Helen Vincent was a successful candidate in such election.

(4) This petition is accompanied by the payment of the sum of Twenty Dollars ($20.00), being the total of $5.00 for each precinct for which the ballots are to be recounted.

Dated this _____ day of April, 19____

/s/ William Barton
William Barton

7) Now ask the team to set the "voted and counted" ballots aside so that they cannot be mixed up with the "defective and objected-to" ballots.

8) Open up the "defective and objected-to" ballots envelope. Take out and sort these ballots and count them.

9) Add this number to the "voted and counted" ballots.

10) Put the "defective and objected-to" ballots back in their envelope and set them aside.

11) Now have the clerks count the voters' applications. Don't rely on the number for the last application assigned by the election judges, because they may have skipped one inadvertently. (In fact, don't rely on anything the election judges did. This count must be done from scratch.)

12) If the number of voters' applications for ballots equals the total of "voted and counted" ballots plus "defective and objected-to" ballots, go directly to Step 14. If the number is different, go to Step 13 before going to Step 14.

13) If there are more ballots than there are voters' applications, put all the "voted and counted" (but not the "defective and objected-to") ballots in the ballot box and shake the box. Then withdraw enough ballots so that the two totals will match. Write on a small piece of paper that these ballots were withdrawn prior to the recount in order to conform the number of ballots to be recounted to the number of voters' applications. Put a paper clip on this group and set them aside. There is no provision in *The School Code* for this step, but it is sanctioned by Section 18-9 of *The Election Code.*

14) Now have the "caller" take the pile of "voted and counted" ballots and ask him to examine the first ballot for the following:

- Does it have the judge's initials on the back?
- Does it contain any distinguishing marks? (For a discussion of distinguishing marks, see **Section 23.10** of this book, which is addressed to the school attorney.)
- Has the voter voted for more than the number of offices to be filled? If he has, the vote cannot be counted for anyone in that group. (For further discussion, see **Section 23.11** of this book.)
- Has the voter indicated his choice by a symbol that contains an intersection of two lines within the square in front of the candidate's name (including a write-in candidate's name, if this is who the voter wanted to vote for)? You and the school attorney should patrol the room throughout this entire procedure. If the clerks

have a question about the validity of any ballot, they should ask you and the school attorney for advice.

The "markers" should observe the "caller" during the process of inspection of the ballot to ensure that the "caller" doesn't overlook anything.

15) If, after examining a ballot in Step 14, the clerks decide that the judges counted it improperly

FORM FORTY-NINE —
The Resolution Authorizing a Discovery Recount

RESOLUTION AUTHORIZING DISCOVERY RECOUNT

WHEREAS, heretofore on April _____, 19____, an election was held in School District No. 5, Mythical County, Illinois, to elect two members of the Board of Education of such District for full terms of three years each, and one member to fill an unexpired term of two years; and,

WHEREAS, thereafter on April _____, 19____, the Board of Education conducted a canvass of the results of such election and found that the candidates received the number of votes set opposite their names as follows:

Candidate	*Number of Votes Received*
(a) Member for full term of three years:	
Frank Cavendish	2,730
Helen Vincent	2,592
William Barton	2,499
Marianne O'Hara	1,720
David Turner	562
G. S. (Smokey) Ramone	269
Mary Phillips	1
Carl Heinrich	1
Catherine Kennedy	1
Paul Wilson	1
Howard Grant	1
(b) Member to fill unexpired term for two years:	
Richard Greenfield	2,806
Marianne O'Hara	2,475
David Turner	526
Catherine Kennedy	1
Paul Wilson	1
George Allport	1

WHEREAS, thereafter on April _____, 19____, the Board declared that Frank Cavendish and Helen Vincent were elected as members of such Board for the full term of three years each, and Richard Greenfield was elected to fill an unexpired term of two years; and,

WHEREAS, on April _____, 19____, the Board received a Petition from William Barton asking that the ballots cast in Precincts No. 1, No. 2, No. 3, and No. 4 be recounted; now, therefore,

BE IT RESOLVED by the Board of Education of School District No. 5, Mythical County, Illinois, as follows:

Section 1: The Board finds as follows:

(1) The Petitioner was a candidate for member of the Board of Education for the full term of three years in the election held on April _____, 19____.

(2) Candidate Helen Vincent received 2,592 votes and Candidate William Barton received 2,499 votes; therefore Candidate Barton received 96.4 percent of the votes cast for Candidate Helen Vincent, being at least 95 percent of the votes cast for a successful candidate.

(3) The Petition was filed with the Board within five days of the date of the proclamation by this Board of the results of such election.

(4) The Petition requests that a recount of the ballots cast in four precincts be conducted, and the Petition was accompanied with the payment of the statutory fee of $5.00 for each such precincts.

(5) The Petition meets the requirements of Section 9-20 of The School Code (Chapter 122, Section 9-20, Illinois Revised Statutes, 1975).

Section 2:

(1) The Board therefore authorizes and directs the Secretary to conduct a recount of the ballots cast in the April _____, 19____ election in Precincts No. 1, No. 2, No. 3, and No. 4. Such recount is to be conducted beginning at 8 p.m. on April _____, 19____, in the District Administrative Office, Room 107, Lincoln School, 605 West Grand Avenue, Ourtown, Illinois.

(2) The following named persons are hereby appointed as Clerks for the purposes of such recount:

Martha Harrison
Millard Polk
Benjamin Grant
William Henry Johnson
Lyndon Jefferson

(3) Such recount shall include an examination of all ballots counted by the Judges of Election as well as those in the envelope marked "defective" and "objected-to" as returned by said Judges of Election.

Section 3: Upon completion of such recount, the Secretary shall record the results thereof and file the same with the documents comprising the record of such election, and deliver a certified copy of the resolution stating the results of such recount to the Petitioner.

Section 4: The results of such recount shall not affect the results of such election as declared by this Board on April _____, 19____.

Adopted this _____ day of April, 19____.

AYES: Cavendish
Vincent
Johnson
Greenfield
Williams
Carlton
Mitgleider

NAYS: None

ABSENT: None

/s/ Frank Cavendish

Frank Cavendish, President
Board of Education of School District
No. 5, Mythical County, Illinois

(SEAL)

ATTEST:

/s/ Robert Williams

Robert Williams, Secretary
Board of Education of School District
No. 5, Mythical County, Illinois

(let's say that it didn't have the judge's initials on it), then the clerks should endorse on the back of the ballot something similar to this: "This ballot is considered to be defective for the reason that it does not contain the judge's initials. Recount, April ——, 19——." All the clerks should endorse the statement. Ballots of this type should also be flagged and set aside. However, they should not be put into the "defective and objected-to" envelope. **Only the ballots that the election judges put in this envelope should be in it when the recount is complete.**

16) If the ballot is "clean," the "caller" should call out the vote that is shown ("one vote for Cavendish, one vote for Barton," etc.). The "markers" should separately mark the tally sheet as each vote is called. These marks should be made vertically in groups of four, with the fifth mark drawn through the first four.

17) Steps 14 through 16 should be followed for each ballot in the "voted and counted" stack. From time to time, the "markers" should cross-check with each other to see that they have the same count for each candidate. If they don't, they must go through the calling and marking process again until they do.

18) When all of the "voted and counted" ballots have been counted and the "markers" agree with the totals, these ballots should be returned to the ballot bag.

19) Next, take out the "defective and objected-to" ballots again. Examine each one (Step 14). The election judges should have indicated on the reverse of the ballot the reason they considered the ballot to be "defective" or "objected-to". If the clerks agree that the election judges were correct, then the ballot should be returned to the envelope. If, however, the clerks do not agree, then the ballot should be counted. The clerks should write on the back: "Counted as a voted ballot in the Recount, April ——, 19——." Each then should sign his name. All the ballots that come out of the "defective and objected-to" envelope should be returned to that envelope, even though they were considered as "voted and counted" in the recount.

20) When all of the ballots have been examined, the totals checked, and the supplies returned to the ballot bag, the clerks should fill out a certificate of results and give this to you. Then they should seal the bag and sign their names across the seal (in the same manner as the election judges did). This seal should be made in such a way that the signatures of the election judges are

FORM FIFTY — Resolution Declaring the Results of a Discovery Recount

Resolution Declaring Results
of Discovery Recount

WHEREAS, pursuant to a Petition filed on April _____, 19____, with the Board of Education of School District No. 5, Mythical County, Illinois, and a Resolution adopted by such Board on April _____, 19____, a recount of the ballots cast in Precincts No. 1, No. 2, No. 3, and No. 4 in the election for members of the Board held in the District on April _____, 19____, was conducted by the Secretary on April _____, 19____, as provided by Section 9-20 of The School Code, (Chapter 122, Section 9-20, Illinois Revised Statutes, 1975); and

WHEREAS, the Secretary thereafter reported the results of such recount to this Board; now, therefore,

BE IT RESOLVED by the Board of Education of School District No. 5, Mythical County, Illinois, as follows:

Section 1: The Board finds as a result of such recount that the ballots cast in Precincts No. 1, No. 2, No. 3, and No. 4 were as follows:

Precinct No. 1

Candidate	*Number of Votes Received*
(List all candidates and the number of votes received, by precinct.)	

Section 2: The result of such recount shall not affect the results of such election as declared by this Board on April _____, 19____.

Section 3: The Secretary is hereby authorized and directed to insert into the official record of the results of such election a certified copy of this Resolution.

Adopted this _____ day of _____, 19____.

AYES: Cavendish
Vincent
Johnson
Greenfield
Williams
Carlton
Mitgleider

NAYS: None

ABSENT: None

/s/ Frank Cavendish
Frank Cavendish, President
Board of Education of School District
No. 5, Mythical County, Illinois

(SEAL)

ATTEST:

/s/ Robert Williams
Robert Williams, Secretary
Board of Education of School District
No. 5, Mythical County, Illinois

/s/ Robert Daniels
Robert Daniels, President

/s/ Robert Daniels
Robert Daniels, President

still visible. Near the clerks' signatures should be the endorsement: "Recount, April ——, 19——."

During the recount process, the candidates, the watchers they appoint, board members, newspaper reporters, and members of the public should be permitted in the room and should be allowed to observe the procedure. However, they should be told that they cannot touch any of the election materials, nor can they interfere in any way with the recount process. You have an obligation to ensure that the recount is conducted accurately and fairly. Although the recount does not affect the results proclaimed earlier by the board, it does advise the petitioner (and everyone else) whether the election itself was properly conducted.

Another benefit of a recount is that you can see how well the election judges have performed. If you find errors, revise the election judge school curriculum so that the next batch of election judges will produce a better result.

After the recount is completed, the board of education should adopt a resolution declaring the results of the recount (see **Form Fifty**).

12. The Final Events

12.1 The Election Contest

The next event in the calendar of events occurs on the 30th day following the election. This is the last day on which a petition can be filed in the circuit court to contest the election. (Actually, the 30-day period begins to run from the date the board of education declares the results of the election.)

A contested election, if it occurs, will fall primarily under the supervision of your school attorney. Therefore, election contests will be discussed in the final segment of this book addressed to the attorney (**Chapter 23**). You should read it to become familiar with election contests.

12.2 Destruction of the Ballots

The last statutory event shown on the calendar occurs six months after the election. This is the date on which you must burn the ballots as required by Section 9-16 of *The School Code*. You must burn the voted ballots, the defective and objected-to ballots, the unvoted ballots, and your reserve supply. However, we suggest that you keep 10 blank ballots for each precinct. You should retain one of each kind in your election record, and you may want one of each kind for the "showings" that the election was properly held if it becomes necessary for authorizing the issue of bonds.

Memorialize this event by inserting into the election record certification that the ballots were destroyed (see **Form Fifty-One**).

12.3 The Election Record

The last "event" (which is not shown on the calendar because it should be ongoing) is your task of putting together an election record. The election record assembles one copy of each document used in connection with the election, starting with the resolution designating the place for filing nominating petitions and ending with the certificate of destruction of ballots. The documents should be inserted in the election record in chronological order.

FORM FIFTY-ONE —
Certificate of the Destruction of the Ballots

STATE OF ILLINOIS)
) SS
COUNTY OF MYTHICAL)

Certificate of Destruction of Ballots

I, Robert Williams, certify that I am the duly elected, qualified, and acting Secretary of the Board of Education of School District No. 5, Mythical County, Illinois, and in such capacity I am the keeper of the records and seal of such District.

I further certify that, heretofore, on April _____, 19___, there was held in such District a regular election for members of such Board, and from and after the delivery to me of the poll books, tally sheets, and ballots by the judges of such election, such documents were filed in my office and remained there under my custody and control.

I further certify that on _____, 19____, such date being not less than six months following the date of the election, I caused the ballots to be destroyed by burning as required by Section 9-16 of The School Code.

Dated this ____ day of _____, 19____.

/s/ Robert Williams
Robert Williams, Secretary
Board of Education of School District
No. 5, Mythical County, Illinois

If you keep originals, signed resolutions, and other instruments with the minutes or in some other file, make copies of the originals (showing all signatures) for the election record. Each document should be certified by you to be a true copy of the original. We suggest that you preserve the election record in your permanent records.

The School Code offers guidance for only two documents and the length of time that you must keep them. Section 9-16 requires you to burn the ballots six months after the election. Section 9-10 requires you to keep receipts for the notices you sent to candidates concerning their obligation to file campaign financial reports for two years.

However, since all the election documents are "public records" within the meaning of *The Local Records Act*, you cannot dispose of them until you have received the written approval of your local records commission to do so. Consult with your school attorney about this question.[46]

This completes our discussion of the school board secretary's role in the school election. We hope that we have given you a good sense of direction. Be sure to follow the calendar of events carefully. If you have any questions or problems, consult your school attorney.

Judges of Election

13. The Legal Role of Election Judges

You, the judges of election, are the officers in charge of the election procedure in your polling place. There are at least three judges all of equal rank and authority in each polling place. You rule by majority vote. You can assign among yourselves the jobs that must be performed on election day.

Please note that an election judge cannot leave the polling place during the day. You must stay until all the votes have been canvassed and returned to the secretary at the end of the day. Of course, you can step down the hall for a short time, but, if you do, the election process must stop until you return.

Your major concern is the preservation of the integrity of the ballot and the accurate counting of the votes. If you have questions about anything, call the secretary at the school administration office. If he cannot answer your question he will call the school attorney for assistance.

14. Before the Polls Open

You should arrive at the polling place at least an hour before it is scheduled to open for voting. Section 9-6 of *The School Code* requires that the polling place be open no later than 12:00 noon and close no earlier than 7:00 p.m. on election day. (For elections called by a board of school directors, polls must only be open for at least two hours between noon and 7:00 p.m.) In our mythical election, the polls will be open from 10:00 a.m. to 8:00 p.m.

When you arrive at the polling place, you should find your kit of materials already delivered by the secretary. See **Chapter 8** of this book for a description of the contents of the kit. Examine the kit to see if all the necessary supplies are there. If something is missing, call the secretary.

The next step is for each judge to administer the judge's oath to one another (see **Form Thirty-Two**). Because our mythical school board has decided to use voters' affidavits rather than poll books, you must sign separate pieces of paper for these oaths as required in Section 9-14 of *The School Code.*

Assume that one of the election judges receives a call from home and must leave. It is reasonable to assume that he will be gone for the rest of the day. The two remaining judges can fill the vacancy by appointing someone else who is quailfied to vote in this precinct at this election. You must swear in the substitute judge, who then fills out an oath. Then you record the fact that you appointed him on the certificate designating a substitute election judge (see **Form Thirty-Three** on page 47).

The ballots will be bundled into packages containing 100 ballots each. Each package will have a label on it indicating the precinct number and the number of ballots enclosed. Keep these labels; it is essential that you have an accurate count of all ballots, whether voted or not. Check the ballots to see that they have the correct precinct designation on the reverse side. It may be that your school board has decided not to put precinct designations on the back of the ballot (in our mythical election, that decision has been made). But, Section 9-12 of *The School Code* gives the board of education the

option of showing precinct numbers on the back of the ballot. Only those ballots with your precinct number can be voted in your precinct.

Next, open the ballot packages one at a time and count the ballots enclosed. If the number of ballots enclosed does not equal the number shown on the label, indicate this fact on the label.

Then check to see that the voting booths are in place and that pencils have been placed in each booth. It may be that your district is sharing the polling place with another school district. The voting booths can be used for both elections, but there must be an individual ballot box for each election.

Next, tack up the poster showing the penalties for violating the election law and the instructions to voters.

If you have been asked by more than one district to act as election judge, you must be very careful to keep separate the documents for each election. The documents cannot be intermingled because there is more than one election in progress; each is completely independent from the other.

Open the ballot box to make sure that there is nothing inside it. Don't close it now because you must wait to do this when the polls open later.

15. Duties During Voting Hours

When the time comes to open the polls, one of you must go to the door of the polling place and say **aloud**: "The polls are now open." The open ballot box should then be displayed so that all who are present can see that nothing is inside. The box should then be closed and locked.

When a voter approaches, the first judge should ask him to sign the "Affidavit of Voter" form (see **Form Five**). Several of these forms will be in your kit. Each one has spaces for more than one voter to sign. Make sure that you number these affidavit forms in the upper right-hand corner and keep them in that order. These forms can take the place of the poll book (see **Form Thirty-Six**), but the statute says that the affidavits must be numbered in order for this alternate method to be acceptable.

The second judge then should take a ballot and write his initials on the reverse. The second judge then hands the initialled ballot to the voter.

The third judge then tells the voter that, when he has completed his vote, he should fold the ballot in such a manner as to conceal his vote and so that the judge's initials are visible. The third judge then directs the voter to a voting booth. When the voter has completed his voting and has folded his ballot, he should display it to the third judge in such a manner that the judge cannot see the vote, but can see the judge's initials.

If a voter asks for assistance because he has a physical disability that hinders his ability to vote because he is blind or cannot read English, a judge should have him fill out a disabled voter's affidavit (or should assist him in doing so). Then two of the judges should assist him in marking his ballot (see **Form Forty** on page 50).

The voter then must deposit the ballot in the ballot box. A judge may assist if the voter cannot do it himself; however, in all other instances the voter must deposit the ballot himself.

Occasionally a voter will be challenged. It is the judges' obligation to challenge a voter if they believe that he is not qualified. Candidates or their regularly appointed watchers and challengers have the right to challenge, as does any qualified voter. If a voter is challenged, he may fill out an affidavit stating that he is qualified to vote. He also must produce a witness who will sign the affidavit stating that he knows that the voter is qualified (see **Forms Thirty-Eight** and **Thirty-Nine**). A challenged voter also must sign the regular affidavit to vote.

If a voter spoils a ballot and requests another, he may be given one. The spoiled ballot must be retained and accounted for after the polls close.

Judges are required to make certain that there is no electioneering or vote solicitation at the polling place or within 100 feet of it. Judges also are required to prevent persons from interrupting, hindering, or opposing voters while approaching the

polling place or while inside. Judges may request police assistance to enforce these regulations.

One half hour before the polls must close, one of you must say **aloud**: "The polls will close in one half hour." At the time fixed for closing the polls, the doors to the polling place should be secured. All voters who are then standing in line are permitted to vote, but no person may enter the polling place after the closing time for the purpose of voting.

Don't you forget to vote! You must follow the same procedure as any other voter, of course.

16. Duties After the Polls Close

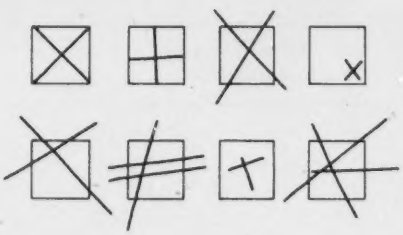
Promptly at the time fixed for closing the polls, one judge should say **aloud**: "The polls are now closed." After all persons who were standing in line have voted and left the polling place, one judge should take the envelopes containing the absentee ballots and open them. The second judge should compare the voter's signatures on the application for the absentee ballot with the signature on the ballot envelope. He also should make sure that the ballot envelope has been properly completed by the voter. If the signatures match and you all are satisfied that the voter is qualified, the ballot envelope should be opened and the ballot should be initialled by a judge and placed in the ballot box. Both the carrier envelope and the application for an absentee ballot should be saved and returned with the other election materials.

When all absentee ballots have been cast, the ballot box should be opened and all ballots removed. The ballots should be counted. The total must equal the number of ballots cast. If there are more ballots than signatures and applications for absentee ballots, the judges should first remove from the pile any ballots that have been folded and inserted into other ballots. If there are none of these (or an insufficient number of them to reduce the total number of ballots to the number of signatures and absentee ballot applications) the ballots then should be put back into the ballot box. One of the judges should withdraw, at random, enough ballots so that the totals will match. Each of these withdrawn ballots must be returned with the other election supplies.

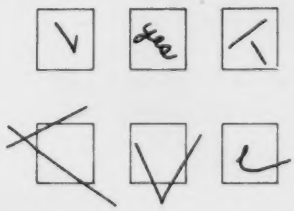
The judges next must count the votes. Each ballot should be examined to see if it is properly initialled. A ballot may not contain "distinguishing marks" (any writing, symbol, or marking that would tend to identify the person who cast it). If, in the opinion of the majority of the judges, a ballot does contain a distinguishing mark, it is "defective" and must not be counted as a vote. One of the judges should write "Defective: distinguishing mark" on the reverse side and the other judges should sign on the reverse. Another type of defective ballot is one that contains more votes than there are candidates to be elected. (See **Sections 23.10 and 23.11** of this book.)

Only marks consisting of an intersection of two lines within the box in front of the candidate's name can be counted. There may be more than two lines, but only if two of them intersect within the square can the vote be counted.

These marks can be counted:



These marks cannot be counted:



Ballots which contain questionable marks may be objected to by any of the judges. All of the judges then decide by majority vote whether the ballot is to be counted. If it is not to be counted, one of the judges must write "objected to" on the reverse side with a short statement of the reasons, and all judges must sign. If a ballot is objected to by one judge, but the majority opinion of all judges is that it is a proper ballot, the ballot should be marked "objected to: counted by majority vote of all election judges." The judges should sign this ballot, and it should be counted and included with the other counted ballots.

As each vote is counted, one of the judges should place a mark in the square on the tally sheet opposite the candidate's name. Five marks should be placed in each square (four parallel lines with the fifth drawn through them). The tally marks should be placed across the tally sheet in the top column until that column is completed. Then the tally marks should be placed in the second column under the top column and starting back at the left. The purpose of this is to make totaling easier.

When all of the ballots have been counted and tallied, the totals should be placed on both the tally sheet and the judges' certificate of results (see **Form Forty-One**).

Next, you must account for all the ballots and complete the ballot reconciliation form (see **Form Forty-Two**). Accounting for each of the ballots is important and frequently becomes confusing to some election judges. However, if you take it one step at a time, it's really not complicated at all.

Ballots are categorized as follows:

1) **Blank (nonvoted)** ballots that were in the initial delivery of election supplies sent to the polling place.

2) **Subsequently received** blank ballots delivered from the reserve supply.

3) **Absentee ballots** delivered in the carrier envelope.

4) **Spoiled** ballots that were identified as such by the election judges prior to the close of the polls and not put into the ballot box.

5) **Voted** and counted ballots.

6) **Voted ballots** that were in the ballot box but ruled "defective" and not counted.

7) **Voted ballots** that were objected to, and for which the objection was sustained by the election judges, and, therefore, were not counted.

8) **Unvoted ballots** that were left over when the polls closed.

You must understand that *every* ballot that comes into the polling place must be counted; *every* ballot that goes out must be counted; and *the number that comes in must equal the number that goes out.*

Here's a suggested procedure for reconciling the ballots:

1) **Add to the number** of ballots shown on the ballot package labels (or the corrected number if, when you counted the ballots before the polls opened, the total didn't match the number shown on the label) the number of ballots you received from the secretary if you ran out and requested an additional supply.

2) **Then, add to** the above total the number of applications for absentee ballots that you received. This gives you the total number of ballots you received from the secretary.

3) **Now add up** the number of voted ballots which you counted in the vote tally. This will include the absentee ballots that were counted (but not those that were defective or objected to) and the objected-to ballots that were counted because a majority of the judges decided that the ballot was proper.

4) **Add the number** of defective ballots that were not counted.

5) **Add the number** of objected-to ballots that were not counted.

6) **Add the number** of spoiled ballots for which you supplied replacements.

7) **Add the number** of blank ballots that were left over, and were not voted.

8) **The sum of** 3) through 7) above is the number of ballots that you are returning. This number must be the same as the number you got in 2) above.

When you have reconciled the ballots, repack the materials so that you can return the results to the secretary. Put the ballots into the several types of envelopes with which you have been supplied. One is for the voted (and counted) ballots. Another is for the ballots that were spoiled by the voters during voting hours and for which you supplied replacement ballots. The next is for the defective and objected-to ballots. The last envelope is for the unused blank ballots that were left over.

Put the voters' affidavits into the envelope marked for this purpose and the certificate of results and the tally sheet into their envelopes.

Make sure that you have signed all these

envelopes across the seal on the reverse side and that you have entered your precinct number on the front.

Now put only the ballot envelopes into the canvass bag. **Do not put your certificate of results, tally sheet, ballot reconciliation form, or ANYTHING ELSE BUT BALLOTS into the ballot bag.** The reason is that, once you have put the ballots into this bag, have sealed it, and have signed your names across the seal, **no one else can get into the bag again unless it is pursuant to a properly called discovery recount or in connection with an election contest.** If you show up at the secretary's office with the certificate of results, the tally sheet, or anything else needed for the canvass by the board of education in the bag, you must open the bag yourselves (all three judges, even if you must wait for all three to be there), take out what's needed, and reseal and resign the bag.

Put the rest of the materials back into the kit along with the sealed ballot bag and take the kit back to the secretary's office. Obtain a receipt for what you returned (because you are under a statutory duty to make this return within five days after the polls close and you'll want something to prove that you complied).

Here are some "don'ts" to remember:

1) **Don't leave** the polling place until you have completed your canvass, even if it's 2 a.m.!

2) **Don't remove** the ballots or any other election materials from the polling place (or even from the room in which the voting took place) until you are ready to make your returns.

3) **Don't take** the ballots home; don't leave them in your car; don't do anything but take them directly to the secretary's office after you have completed your canvass.

4) **Don't put anything** into the ballot bag except the ballots.

Once you have properly made your returns to the secretary, your part in the election process is over, unless you are called as a witness later in an election contest.

The Candidate

17. Qualifications

If you are 18 years or older, have lived in the school district for a year, and are a registered voter from a residence in the school district, all on election day, you can be a candidate for member (or director) of a board of education (see Sections 10-3 and 10-9 of *The School Code*).

Of course, you must file your nominating petition, statement of candidacy, and ethics statement in proper form and on time. You need not be an active member of a political party (because there are no party designations on a school ballot). You don't have to run against anyone (because school candidates run in a "field" as opposed to a "matched race"). You don't have to be approved by a PTA, a caucus, or any similar organization.

There are a few "conflict-of-interest" limitations on you, but these are operative only if you win the election. We talk about those later, but first let's look at some things you must do while you are a candidate.

18. The Statement of Economic Interests

One of the things you must do as a candidate is to file with the county clerk a statement of economic interests. This is required by Section 4-105 of *The Illinois Governmental Ethics Act*.[47] Section 9-10 of *The School Code* requires you to file a receipt from the county clerk showing that you filed the ethics statement when you file your nominating papers with the secretary of the board of education.

Although you must file these documents, the time when you are required to do so is not clear. Refer to Section 4-2 of this book for more information on this matter. We suggest that, to avoid any problem about your qualification as a candidate and your compliance with the ethics act, you file your ethics statements with the county clerk *before* you file your nominating papers. Get his receipt, and then file this receipt along with your nominating papers. Then you won't have to worry about whether you are qualified to run for office.

19. Campaign Financing Statements

Next, you must determine whether you will spend more than $1,000 on your campaign or will receive more than $1,000 in contributions. If either of these events occurs, you must comply with the requirements of *The Campaign Financing Act* (see Article 9 of *The Election Code*).

When you file your nominating papers, you will receive a notice from the secretary that you may have an obligation to file campaign financing statements. If you spend more than $1,000 or receive more than $1,000 in contributions for your campaign in any 12-month period, you must form what the act refers to as a "local political committee" (see Section 9-1.7 of *The Election Code*). This committee consists of a chairman and a treasurer. (If you decide to handle all campaign finances yourself, you can designate yourself as both chairman and treasurer.)

Within 30 days after you form the local political committee, the committee is required to file

a statement of organization with the county clerk. The State Board of Elections has prepared a form for this purpose. It can be obtained either from that board or from the county clerk and is referred to as Form D-1.

The treasurer of the committee must keep detailed records of all receipts and expenditures. If a receipt is for more than $20, the records must show the name and address of the person who made the contribution, its amount, and the date on which it was made. Section 9-25 of *The Election Code* prohibits persons from making anonymous contributions or contributions in the name of any other person. Furthermore, you are prohibited from accepting such contributions. If you do get one, you must forward it immediately to the state treasurer and it becomes the property of the state.

The treasurer of the committee also must keep detailed records of all expenditures. If any one expenditure exceeds $20, the treasurer must record the name and mailing address of the person to whom the expenditure was made, its amount, and the date of the payment. He also must keep a receipt or other proof of payment stating the particulars for which the expenditure was made.

All records of receipts and expenditures must be kept for at least two years.

The treasurer of the committee must file five kinds of reports with the county clerk:

1) The "30-day" report (From D-2) is a listing of all campaign contributions you received up to the 30th day prior to the election. It must be filed not later than the 15th day before the election.

2) The "60-day" report (Form D-2) lists contributions you received from the 30th day prior to the election through the 60th day after the election. It's due 90 days after the election.

3) The "$500" report (Form A-1) reports any contribution of $500 or more that you receive during the 30 days immediately before the election. It is due two days after receipt of the contribution.

4) The annual report (Form D-2) is a report of both contributions and expenditures. It is due on July 31 and covers the period from July 1 of the preceding year to June 30 of the current year.

5) The final report (Form D-2) is the report that you file when you have decided that you will not receive any more contributions nor make any more expenditures. When you have filed this report, you dissolve the local political committee.

The State Board of Elections has issued extensive regulations about compliance with *The Campaign Financing Act*. It is beyond the scope of this chapter to explain them in anything more than a summary. Contact either the State Board of Elections (1020 South Spring Street, Springfield, Illinois 62704) or your county clerk for copies of the regulations. These are the pamphlets that the State Board of Elections has published:

1) *An Act to Regulate Campaign Financing*
2) *Rules and Regulations: Disclosure of Campaign Contributions and Expenditures*
3) *Manual of Instructions for Political Committees and Candidates*
4) *Simplified Campaign Disclosure Reporting Guide*

20. The Nominating Petition and the Statement of Candidacy

Now let's discuss your nominating petition and statement of candidacy. The nominating petition must be signed by at least 50 voters or 10 percent of the residents of the school district, whichever is less. Remember that persons who sign must be registered voters. You may have more than the required number of signatures on the petition (it is advisable to get a few extra ones because some may be disqualified because they are not registered voters). If you do not circulate the petition yourself, tell the person who does that all the signatures on the page he circulates must be put there in his presence.

The nominating petition can have more than one page of signatures, but each page should be in identical form and each should have a circulator's affidavit at the bottom. All pages should be firmly bound at the top with staples so that all pages taken together constitute one petition. The last page of the petition should be your statement of candidacy.

You can obtain these forms from the secretary of the board of education.

Make sure that you file your statement of candidacy between the hours of 8:30 a.m. and 4:00 p.m. not earlier than the 45th day prior to the election and not later than the 22nd day prior to the election. File it only with the secretary of the school district or with the person whom the secretary has appointed as his designated representative. Although you may file by mail, it is better to do so in person so that there is no question about the details of filing.

Note: The candidate should study **Form One** on pages 15 through 17. It sets forth typical filing procedures, as well as some legal requirements.

21. Challengers or Watchers

The candidate is entitled to appoint not more than two persons for each polling place to act as challengers or watchers and who may remain during the counting of the votes. You must give each of these persons an affidavit authorizing him to act as your challenger or watcher. He then is required to deliver this affidavit to the election judges (see **Form Fifty-Two**).

FORM FIFTY-TWO — The Candidate's Appointment of a Challenger or Watcher

STATE OF ILLINOIS)
) SS
COUNTY OF MYTHICAL)

Board of Education of School District No. 5
Mythical County, Illinois

To: The Judges of Election
School District No. 5
Precinct No. _____
Election: April ____, 19___

FRANK CAVENDISH, being first duly sworn on oath, deposes and says that he is a candidate for the office of Member of the Board of Education of School District No. 5, Mythical County, Illinois, in the election to be held on April ____, 19___, and that he hereby authorizes SHIRLEY DRAKE, the bearer hereof, to be a challenger or watcher on his behalf in this Precinct.

/s/ Frank Cavendish
Frank Cavendish

Subscribed and sworn to before me this ____ day of April, 19___.

_____
Notary Public

22. Conflict of Interest

If you are elected, there are some limitations concerning whether you can serve as a board member. The first is that, if you have not filed your statement of economic interests, you are ineligible to hold office. Filing late does not cure that defect.[48]

If you are a teacher or other employee of the school district, you must either quit that job or resign as a board member. Two statutes both say that, as a board member, you may not have an interest in any contract entered into by the board of education. Employment is a contract; therefore, you cannot be both a board member and an employee of that district.[49]

Finally, if you hold another public office, you may or may not be able to be a school board member, depending upon the nature of the two offices. The rule is that you cannot hold two public offices if they are incompatible. This term is defined in *People ex rel. Meyers v. Haas* as follows:

> "Incompatibility, in this connection, is present when the written law of a state specifically prohibits the occupant of either one of the offices in question from holding the other and, also, where the duties of either office are such that the holder of the office cannot in every instance, properly and fully, faithfully perform all the duties of the other office. This incompatibility may arise from the multiplicity of business in the one office or the other, considerations of public policy, or otherwise."

In *Haas*, the court ruled that the offices of state senator and clerk of the municipal court were incompatible.[50]

One instance in which a statute specifically provides that a member of one board cannot serve on another board is in *The Public Community College Act*. According to the act, a member of the Illinois Community College Board is prohibited from being a member of a local school board.[51]

It is primarily a matter of fact in each instance whether two offices are incompatible. For example, a notary public is an officer, but few would seriously question the ability of a notary public to be a school board member as well.[52]

Thus, if you hold another public office, consult an attorney to determine whether you can serve also as a member of a board of education.

The School Attorney

Although this is the only section written for the school attorney, we again urge you to read the entire book to become familiar with the concerns and problems facing your school client. The topics in this section are separated only because they are those in which you will be more interested than will the secretary or other functionaries.

Let's start by examining the kinds of legal attacks upon the election process that occur. They are divided into three general types of actions: (1) an election contest, (2) mandamus, and (3) quo warranto. The form used depends on what stage the election is in and on what remedy is sought.

23. The Election Contest

23.1 The Nature of the Action

The most limited type of action is the election contest. Section 9-21 of *The School Code* incorporates by reference the election contest procedures in Sections 23-19 to 23-30 of *The Election Code*. It is important to understand that there is only one thing that can be decided in an election contest: how many votes were cast for or against a candidate (or proposition), thereby to ascertain and render effective the will of the people.[53] Moreover, an election contest is purely a statutory remedy, so the requirements of *The Election Code* must be complied with strictly in order to maintain the contest.[54]

23.2 The Parties

The election contest can be filed by any elector in the district (see Section 23-19 of *The Election Code*). The contest is initiated by the filing of a written petition with the clerk of the circuit court of the county in which the election was held. The petition sets forth the points on which the petitioner contests the election. The petition must be filed within 30 days after the date on which the board of education conducts the canvass and declares which candidates have been elected (see Section 23-20 of *The Election Code*). Copies of the petition must be delivered by mail to the secretary of the board of education, since he is the custodian of the ballots (see Section 23-20 of *The Election Code*). The requirement that the copy be mailed is only directory; personal service of a copy of the petition on the secretary complies with the statute.[55]

The statute is silent about who must be a party to the election contest and who is not. Section 23-23 of *The Election Code* merely provides that the "case shall be tried in like manner as other civil cases." This has been construed to mean civil cases in chancery, without a jury.[56] The cases have held, however, that all candidates, both successful and unsuccessful, must be joined as parties. Failure to do so is sufficient reason to dismiss the petition.[57]

It is not entirely clear whether the board of education, the school district, or the secretary are required to be joined or, if joined, whether they can be dismissed as unnecessary or improper parties. It would seem that once the secretary is served with a copy of the election contest petition, he can take what measures are necessary to ensure that the ballots are delivered from their place of safekeeping to wherever the court directs without necessarily being made a party. The same would seem to be true for the board and the district.

However, a court could hold that, since *The Civil Practice Act* applies to election contests concerning matters not regulated by *The Election Code*, the secretary of the board of education should be made defendant "for the complete determination or settlement of any question involved" (see Section 24 of *The Civil Practice Act*).[58]

23.3 Sufficiency of the Petition

The court first will look to the sufficiency of the petition. An election contest cannot be used as a means to have the ballots opened up to look for evidence to be used as the basis of a tangible charge. Rather the petitioner must both allege the irregularities that occurred and that, because of them, the result of the election was changed.[59]

The petition need not be drafted with precision provided that it sets forth a sufficient number of proper points of contest.[60] The courts also

have recognized that it is impossible for a contestant to have specific knowledge of all irregularities that may have occurred in the election, so he only needs to make allegations on his information and belief.[61] But in so doing, the petitioner must state the basis of his information and belief. The allegation that the result of the vote would be different cannot be merely his estimate of what the vote would have been had there been no irregularities.[62]

The court also will look to the form of affidavit. If the petition is not verified, it will be dismissed. This is based upon the rule of strict construction of the election contest statute. In this case, the court has no jurisdiction to entertain the petition, and the defect cannot be cured by amendment.[63] The court will not, however, indulge in absurdity and dismiss the petition where the words "familiar with" are used. While the argument is made that this does not mean that the affiant "knows" the contents of the petition, the terms were held to be synonomous in *Smiley v. Lenane.*[64] A headnote in the abstract opinion in *Brown v. County Court of Alexander County* indicates that the court held there that, where an affidavit to a petition to contest an election under *The Dram Shop Act* stated that the matters said to be true of the affiant's own knowledge were true in substance and in fact, and that matters stated as being upon his information and belief were true to the best of his knowledge, information, and belief, then the affidavit was successful.[65]

A MYTHICAL ELECTION CONTEST

Let's look at a mythical case to see how it might be handled. In Chapter 11 of this book, addressed to the secretary, we assumed that William Barton, an unsuccessful candiate in our mythical election, filed a petition for a discovery recount.

FORM FIFTY-THREE — The Petition for an Election Contest

In the Circuit Court for the 99th Judicial Circuit,
Mythical County, Illinois

William Barton, *Plaintiff,* -vs- Frank Cavendish, Helen Vincent, Marianne O'Hara, David Turner, G. S. (Smokey) Ramone, Mary Phillips, Carl Heinrich, Catherine Kennedy, Paul Wilson, and Howard Grant, *Defendants.*) No. _____

Petition to Contest Election

Now comes William Barton, and for his Petition to contest an election hereinafter described, he alleges as follows:

1) Heretofore, on April _____, 19____, there was held in and for School District No. 5, Mythical County, Illinois, a regular election for members of the Board of Education of School District No. 5, Mythical County, Illinois. Two members were to be elected for full terms of three years each, and one member was to be elected to fill an unexpired term of two years.

2) The Plaintiff was a duly qualified candidate for the office of member of such Board of Education for the full term of three years, and his name was printed on the ballot as such.

3) The Defendants Cavendish, Vincent, O'Hara, Turner, and Ramone also were candidates for such office, and their names were printed on the ballot as such. The Defendants Phillips, Heinrich, Kennedy, Wilson, and Grant were written onto ballots by voters as candidates for such office.

4) The Plaintiff was a resident of School District No. 5 and Precinct No. 1 of such School District in the aforesaid election for more than 30 days next preceding the said election, and the Plaintiff is a qualified elector in such School District and such Precinct and voted in such Precinct in the said election.

5) Heretofore, on April _____, 19____, being not more than 30 days prior to the filing of this Petition, the Board of Education of School District No. 5 conducted a canvass of the returns of such election filed with the Secretary of such Board by the Judges of Election in the four precincts in such election. Thereafter, as a result of such canvass, the Board of Education adopted a resolution finding that the candidates for the full term of three years each received the following number of votes:

Frank Cavendish	2,730
Helen Vincent	2,592
William Barton	2,499
Marianne O'Hara	1,720
David Turner	562
G. S. (Smokey) Ramone	269
Mary Phillips	1
Carl Heinrich	1
Catherine Kennedy	1
Paul Wilson	1
Howard Grant	1

6) In the resolution referred to in Paragraph 5 herein, the Board of Education declared that the Defendants Cavendish and Vincent were elected to the office of member of such Board for the full term of three years each.

7) The Plaintiff was present at the polling place for Precinct No. 1 in such election from the time said polls opened until the Judges of Election thereof completed their canvass of the results of the vote therein. During such time, the Plaintiff observed the following irregularities of the conduct of the election at such precinct and, because of the same, the Plaintiff believes that a mistake was committed in tabulating the vote at such precinct which, if corrected, would result in the Plaintiff's having received 15 more votes in such precinct and the Defendant Vincent having received 22 fewer votes in such precinct.

continued next page

Assume that during the recount he found what he believed to be a number of irregularities that would invalidate enough votes to have him declared elected. He consults an attorney, who files a petition for an election contest, such as that shown in **Form Fifty-Three.**

23.4 Venue

Let's examine the petition to contest the School District No. 5 election and discuss some of the issues involved. First, let's review the venue. This will be easy in our mythical election by confining School District No. 5 to Mythical County. But there are many school districts with territory in more than one county. If the plaintiff names the school district as a defendant, venue is an easy problem because Section 7 of *The Civil Practice Act* states that actions against a municipal corporation must be brought in the county in which its principal office is located.[66] Even where the petition is filed in the wrong county, it may be transferred to the proper county; the 30-day period for filing is tolled when the petition was filed in the wrong county.[67]

If the school district is not named as a party, Section 5 of *The Civil Practice Act* says that the venue is the county of any defendant. Presumably at least one of the candidates lives in the same county where the school administration office is located, so it might be more practical to file in that county, if for no other reason than for convenient access to the election records.

Form Fifty-Three continued

a) The Judges of Election in Precinct No. 1 improperly counted 15 votes for the Defendant Vincent because each of such votes was on a ballot containing a distinguishing mark, which distinguishing mark rendered such ballot void.

b) The Judges of Election in Precinct No. 1 improperly counted seven votes for the Defendant Vincent because the ballots containing such votes also contained votes for the Plaintiff and the Defendant Cavendish.

c) The Judges of Election in Precinct No. 1 failed to count eight votes for the Plaintiff because, in addition to the voter's mark, which consisted of two lines intersecting in the square to the left of the Plaintiff's name, the voters added such markings on the ballot as follows:

(1) Three voters wrote the word "yes" to left of the square containing the intersection of two lines;

(2) Two voters inserted more than two lines through the square in front of the Plaintiff's name, but two of such lines intersected within the square;

(3) One voter drew an arrow pointing to the Plaintiff's name in addition to marking two lines intersecting in the square in front of the Plaintiff's name;

(4) One voter drew two lines that have the appearance of the letter "T" in the square in front of the Plaintiff's name;

(5) One voter drew two lines which intersected on one of the sides of the square in front of the Plaintiff's name.

d) The Judges of Election allowed three persons to vote in Precinct No. 1 over the challenge of the Plaintiff, none of whom was a resident of such Precinct.

8) Duly qualified challengers or watchers appointed by the Plaintiff were in attendance at each of the remaining three precinct polling places in such election. Each of such persons has stated to the Plaintiff that each observed irregularities in the conduct of the election by the Judges of Election in such Precincts. Based upon such statements to the Plaintiff, the Plaintiff alleges on information and belief that the following irregularities occurred in the conduct of the election in Precincts No. 2, 3, and 4, and, because of the same, the Plaintiff believes that a mistake was committed in tabulating the vote in such precincts which, if corrected, would result in the Plaintiff having received a higher number of votes than the Defendant Vincent in each of such precincts:

(Detail here what the challengers or watchers said they saw to be irregularities.)

WHEREFORE, the Plaintiff prays as follows:

1) That the Clerk of this Court issue summons against each of the Defendants named herein, and that the Sheriff of this County serve the same upon such Defendants.

2) That the Court set a date for a hearing on this Petition not less than 10 days after the date of service of process on such Defendants.

3) That the Court appoint a Canvassing Board for the purposes of recounting the ballots cast in each of the precincts in the aforesaid election, of taking testimony and other evidence, of examining the election returns, and of making a record of all objections to be heard by the Court.

4) That upon a hearing upon such objections, the Court declare as elected the person who shall appear to be duly elected.

_____
William Barton

STATE OF ILLINOIS)
) SS
COUNTY OF MYTHICAL)

William Barton, being first duly sworn on oath, deposes and says that he is the Plaintiff in the foregoing complaint; that he has read the foregoing complaint and has knowledge of the contents thereof; that the matters set out therein are true in substance and in fact, except as to those matters which are therein stated to be on information and belief; and that as to such matters he believes them to be true.

_____
William Barton

Subscribed and sworn to before me
this ____ day of _____, 19____.

_____
Notary Public

23.5 The Parties

The cases have held that all candidates, whether successful or not, must be joined as parties. But what about write-ins? In our mythical election we had four. Section 9-14 of *The School Code* refers to write-ins as "candidates." (Actually, the word "those" is used, but it seems clear that this is a pronoun substituted for the noun "candidate" in the immediately preceding thought in Section 9-14.)

There is also a question about whether all candidates, including our mythical write-ins, are necessary parties. Two recent cases hold that all candidates, whether successful or not, are necessary parites.[68] However, two older cases say that the candidates who received the smallest number of votes and who do not make any claim to the contested office need not be joined as parties.[69] In drafting our mythical petition, however, we have followed some advice from one of these cases, *Arnold v. Keil*: "While it would have been better practice to have made Tucker a party . . . ."[70]

In our petition, the plaintiff has been described as a candidate, as an elector, and as a resident of the school district and a precinct in it. It is in his capacity as an elector that he brings the action, since Section 23-19 of *The Election Code* confers this right only on an elector of the governmental unit for which the election was held. The allegations about his residency have been added because, in *Donovan v. Comerford*, an election contest petition was held to be fatally defective because it did not allege facts showing that the plaintiff was a resident of the election district for at least 30 days prior to the election.[71]

23.6 The Allegation That the Plaintiff Voted

There also is an allegation that the plaintiff voted at the election, since this is a jurisdictional requirement contained in Section 23-20 of *The Election Code*. Had this allegation been missing, the defect could have been cured by an amendment to the pleading under Section 46 of *The Civil Practice Act*, assuming, of course, that the plaintiff in fact voted at the election.[72]

23.7 The Statute of Limitations

In paragraph five of the petition, we allege the date on which the board of education found and declared the results of the election. This is to show the date on which the 30-day period began, within which the petition is required to be filed by Section 23-20 of *The Election Code*.

23.8 The Allegation of Votes Received

Paragraph five also shows the votes that the board of education found the candidates to have received. This is because, even though the plaintiff can show that there were irregularities in the conduct of the election, if they were not sufficient to change the vote, the contest will not be allowed.[73]

However, the votes shown in paragraph five are limited to those cast for candidates for the full term. They do not show those cast for candidates for the unexpired term of two years since an election contest petition must be limited to only one office.[74]

23.9 Bases for Allegations

Paragraph seven of the petition states that the plaintiff was present throughout the election proceedings at one of the precincts. Based upon his own knowledge, he then sets forth the irregularities that he contends would change the vote in that precinct. It is not necessary that the allegations in an election contest petition be based upon the actual knowledge of the plaintiff; he may allege irregularities on his information and belief.[75] But he must have something substantial to go on; the court will not allow him to engage in a "fishing expedition" to see if he can find something wrong.[76]

Since the "very nature of the proceeding compels him largely to rely upon information obtained from other persons," our plaintiff alleges irregularities on information and belief.[77] And, to meet the language in some cases that "nowhere does he state the basis of his information and belief," the plaintiff alleges that he obtained information from his challengers or watchers in other precincts.[78]

23.10 Distinguishing Marks

Let's review the merits of the irregularities of which the plaintiff complained.

The first is that some ballots should not have been counted because they contain a distinguishing mark. In 1891, the General Assembly enacted the *Ballot Reform Law*. The title of the act said that it was intended "to secure the freedom, purity, uniformity, and secrecy of the ballot." In 1895, the act was scrutinized by the Supreme Court in a contest of the election of a county superintendent of schools in *Parker v. Orr*. The case sought to determine what the voter's intent was. The Supreme Court stated that the rule should be one which does not lead to the destruction of the secrecy of the ballot. The court said:

> "Nothing is said in the act about distinguishing marks, but if a mark or character is used which, though indicating an intention to

> vote a particular party or for certain candidates, at the same time serves the purpose of indicating who voted it, thereby furnishing the means to designing persons of evading the law as to secrecy, the ballot should be rejected."

The court held that the voter's signature on the ballot is a distinguishing mark.[79]

Eight years later the matter of distinguishing marks came up before the Supreme Court again in *Rexroth v. Schein*. In *Rexroth*, the argument was made that, by writing in the name of a candidate, the voter put a distinguishing mark on the ballot. The court held that not every mark on the ballot is a distinguishing mark and, if it is put there by the voter in an honest effort to indicate his choice, it will not invalidate the ballot.[80]

It is clear that, if the mark is put on the ballot by someone other than the voter, and there is no evidence that it was intended to disclose who voted the ballot, it is not a distinguishing mark. In *Perkins v. Bertrand*, the election judges thought that they were supposed to number the ballots with the same number shown in the poll book opposite the voter's name. When this was done, clearly anyone could tell who voted which ballot. But the court said that the rule should not defeat the franchise of an innocent voter who did not place the mark on the ballot and allowed the votes to be counted.[81]

In *Barlick v. Kunz*, the court ruled that an arrow pointing to the candidate's name (in conjunction with two intersecting lines in the square in front of his name) was not a distinguishing mark but merely an indication of an anxious voter that his vote should be counted correctly. However, the court also said that an "X" in the square in front of the name followed by an "X" after the candidate's name is a distinguishing mark.[82]

In *Boland v. City of LaSalle*, the court held that an indecent expression written on one ballot and "You Big Fool" written on another were distinguishing marks.[83] Therefore, it is a matter of evidence in each case whether a mark on the ballot is a distinguishing mark. [84]

23.11 Ballots with Too Many Votes

The next irregularity alleged in the complaint is that there were more votes cast for the office than there were positions to be filled. In a "Vote for Two" situation, one "X" can be counted and two "X's" can be counted, but if there are more than two, **none can be counted.** This is because you can't tell for whom the voter intended to vote. For example, the voter may vote for both of two opposing candidates in an election where candidates oppose each other, but neither vote may be counted.[85]

23.12 The Shape and Location of a Voter's Mark

Next, the plaintiff makes a series of allegations about the shape and location of the mark indicating the vote. The basic rule is that **there must be an intersection of two lines within the square in front of the candidate's name** (see Section 9-14 of *The School Code*). It's clear that markings such as "yes," "O," "U," "V," and the check mark are **not** to be counted.[86]

But "T" does count; so does a mark that has more than two lines in the square, provided that two of them intersect. Wavy lines apparently made by an aged or incapacitated voter also count, if they intersect.[87]

Remember, the rule is that the intersection must be **within the square.** An intersection of two lines outside of the square is not a valid mark.[88]

Also see **Chapter 16** of this book, which is addressed to election judges.

23.13 Non-Resident Voters

The next irregularity alleged is that the election judges allowed persons to vote who were not residents of the precinct in which they voted. The term "residence" for purposes of qualification of voters was defined in 1840 as a "permanent abode."[89] Since then many cases have examined specific sets of facts to determine whether a particular person was a resident of an election district. Refer to Election Key Numbers 71 through 77 in *West's North Eastern Reporter Digest* for more information.[90]

23.14 Precincts To Be Recounted

The plaintiff also has asked for a recount of the ballots in all of the precincts. (He could have asked for a recount in only some of them, however.) If he gets his recount, during it he can amend his petition either to reduce or to increase the number of precincts to be recounted. If he has asked for a recount in less than all of the precincts (and doesn't amend to increase this number), when the recount is complete, an opposing candidate or elector may file a petition (within 10 days after the completion of the plaintiff's recount) for a recount of other precincts. This is all provided for in Section 23-23 of *The Election Code*.

In *Burton v. Powell*, the defendant argued that a recount of less than all of the precincts was "unprecedented, unfair, and inaccurate" and, unless the parties stipulate to a recount of fewer than all of the precincts, the court should order a recount of everything. The court rejected this argument, saying that Section 23-23 of *The Election*

Code intends that a recount can be limited to those precincts where errors and irregularities existed which might alter the outcome of the election.[91]

23.15 The Recount Board

If a recount is allowed, the court may appoint either a board of election commissioners or a canvassing board to conduct it. This board is empowered by Section 23-23 of *The Election Code* to conduct the recount, to examine the election returns, to hear evidence, to record objections, and to "take all necessary steps and do all necessary things to determine the true and correct result of said election and to make a report thereof to the court."

The hearings conducted by the board of election commissioners or the canvassing board appointed by the court are administrative proceedings. The method by which the hearings are conducted must "conform to the principles of justice and the requirements of due process of law," but this requirement is satisfied if the procedure adopted is "suitable and proper to the nature of the determination to be made."[92]

23.16 Costs

Section 23-23 of *The Election Code* also provides that the members of the recount board must be compensated for their services; so must their assistants. Any expenses incurred by the recount board must be reimbursed. All expenses must be approved by the court and allowed as costs.

If the recount board, any party, or the court itself thinks that security for the payment of the costs is necessary, the court may require that a deposit be made. If the court annuls the election, or finds that the person whose election is being contested was not in fact elected, then the petitioner who contested the election gets his security deposit back. But, if the person whose election is contested is found to have been properly elected, he gets his security deposit back. (see **Key Concept Fourteen — Some History of Recount Costs.**)

23.17 Conditions Precedent to a Recount

Even though the petitioner in our mythical election contest has asked for a recount, he may not get it. He has two hurdles to cross. First, he must show that a recount will affect the outcome of the election.[94]

Second, he must overcome the presumption that the returns of the election judges are not correct. The ballots are the best evidence of the result of the election, but the petitioner first must show that the ballots were properly preserved.[95] If there is evidence that the ballots were tampered with between the time the election judges completed the precinct canvass and the time of the election contest, the judges' returns will be taken as the best evidence of the result.[96]

There are many cases concerning whether the ballots were properly preserved. For example, in *Sargent v. Newell*, the election judge took the ballots home and put them in his closet. Three days later he delivered them to the county clerk. The evidence that the votes had been tampered with was that the wax seal was different. The court held that there was an opportunity to tamper with the

Key Concept Fourteen — Some History of Recount Costs

The third paragraph of Section 23-23 of *The Election Code* contains the provisions for referral of the recount to an administrative board. It also provides a deposit to secure the payment of costs. This section also was in the 1967 version of the statutes. However, in 1964, the new *Judicial Article* of the state constitution became effective. One of the principles in this new article was that fee officers and masters in chancery were abolished. But there were numerous references in the statutes to such officers. To eliminate inconsistencies, the legislature adopted 40 bills in 1969 to remove the references. One of these amendments removed the third paragraph of Section 23-23 of *The Election Code*.

In an election, Richard Elrod defeated Bernard Carey for sheriff of Cook County. Carey filed an election contest petition, asking for a recount. As a condition of the recount, the court ordered that Carey deposit $220,642.80, the amount estimated by the Chicago Board of Election Commissioners and the Cook County Clerk as the cost of conducting the recount. Carey did not deposit the money, and the court dismissed his petition. Carey appealed.

The Supreme Court said that an election contest is unlike typical litigation submitted to the courts and that the procedures contained in the deleted paragraph of Section 23-23 were necessary and important to the conduct of an election contest. The court said that the legislature intended only to delete references to masters in chancery as a housekeeping measure, and that it was an oversight to delete the third paragraph of Section 23-23. The court said that it has authority to read into statutes omitted by oversight, and affirmed the order of the trial court requiring the deposit to be made.[93]

In 1973, the legislature restored the third paragraph of Section 23-23.

ballots, so the election judges' returns were the best evidence of the result. Because people could get in and out of the vault in the town clerk's office where the ballots were kept after the election, the court ruled that they were not properly preserved.[97]

The chain of possession in *Mayes v. City of Albion* was as follows: The city clerk personally called for the ballots at one precinct and took them home. Other ballots already had been delivered to him by the election judges. Then the clerk and sheriff took the ballots to the sheriff's safe in the courthouse. Two days later they were taken from the safe and locked in an empty cell in the jail. When they were impounded in the election contest, they were delivered to the clerk of the court. The court held that they were properly preserved.[98]

In *Crum v. Green*, the court examined the evidence concerning preservation of the ballots and said: "In nearly every case it is possible that someone who was not authorized could have access to the ballots. We believe that this principle must be taken to mean access which would enable one to tamper with the ballots without the result being observed. All of the facts and circumstances must be considered."[99]

In *Leach v. Johnson*, the court said that whether there is such a tampering as to result in improper preservation is a question of fact for the trial court to consider.[100]

23.18 The Ballots Are the Best Evidence

Once the determination has been made that the ballots have been properly preserved and the recount is ordered, the ballots then become the best evidence of the results of the election.[101] The court is not limited to the irregularities alleged by the petitioner, but looks to all of the ballots to determine what the correct vote was. In so doing, it will not only examine the ballots themselves to see if they were properly counted, but it also will hear evidence about the conduct of the election. If the irregularity complained of is the failure of an election official to perform a mandatory act (such as not initialling the ballot), then that ballot cannot be counted.[102] However, if the irregularity is only a failure to perform a directory act, and if that failure did not result in the deprivation of anyone's vote, then the conduct will not result in invalidating ballots.[103]

If there has been such wholesale improper conduct on the part of the election officials that it is impossible to separate legal votes from illegal votes, the court can disregard all of the ballots cast in that precinct.[104]

23.19 The Court Will Declare the Winner

The last prayer in our mythical petition is that the court declare elected the person who shall appear to be duly elected as authorized by Section 23-26 of *The Election Code*. The remaining pleadings and proceedings are governed by *The Civil Practice Act*.[105]

24. Mandamus and Quo Warranto

We said earlier that mandamus and quo warranto also are available to attack the election process. The election contest petition is the only method of contesting the results of the election.[106] But the election contest proceeding is limited to that and cannot be used to challenge the eligibility of a person who has been elected to hold the office. That can be done only by quo warranto.[107]

In *Glakemeier v. Calhoun*, the election of the mayor of Belleville was contested. The plaintiff said that he should have been given leave to file an amended complaint to allege that all of the votes from one precinct were invalid. This was true, he argued, because the proceedings recently taken to annex the territory of that precinct to the city were invalid. The court said that it would not look into the validity of the annexation because that can be done only through quo warranto.[108]

If the election officials have not performed an act that they are required to perform in connection with an election, the judicial proceeding to require them to do so is mandamus. However, it is beyond the scope of this book to describe the quo warranto and mandamus procedures.[109]

Footnoted Citations

All references to *The Illinois Revised Statutes* are to the 1975 edition.

1. *Scofield v. Board of Education of Community Consolidated School District No. 181*, 411 Ill. 11, 103 N.E. 2d 640 (1952).
2. *Zbinden v. Bond County Community Unit School District No. 2*, 2 Ill. 2d 232, 117 N.E. 2d 765 (1954).
3. *The Illinois Revised Statutes*, chapter 131, section 1.11.
4. *Gann v. Harrisburg Community Unit School District*, 73 Ill. App. 2d 103, 218 N.E. 2d 833 (1966).
5. *Id.*
6. *Zbinden v. Bond County Community Unit School District No. 2, supra* note 2.
7. *People ex rel. Anderson v. Community Unit School District No. 201*, 7 Ill. App. 2d 32, 129 N.E. 2d 28 (1955).
8. *Carstens v. Board of Education of East Alton-Wood River Community High School District*, 27 Ill. 2d 88, 187 N.E. 2d 682 (1963).
9. *People ex rel. Anderson v. Community Unit School District No. 201, supra* note 7.
10. *People ex rel. O'Connell v. Read*, 256 Ill. 408, 100 N.E. 230 (1912).
11. *Ricketts v. Village of Hyde Park*, 85 Ill. 110 (1877).
12. *The Illinois Revised Statutes*, chapter 120, section 484b.
13. *Ury v. Santee*, 303 F. Supp. 119 (N.D. Ill., 1969).
14. *The Illinois Revised Statutes*, chapter 127, section 604A-107.
15. See, for example, *Anderson v. City of Park Ridge*, 396 Ill. 235, 72 N.E. 2d 210 (1949).
16. *The Illinois Revised Statutes*, chapter 38, sections 32-2, 1005-8-1, and 1005-9-1.
17. See *People ex rel. Frank v. Streuber*, 2[illegible] Ill. App. 444 (1922).
18. *Baker v. Carr*, 369 U.S. 186, 7 L. Ed. 2d 663, 82 S.Ct. 691 (1962).
19. 43 U.S.C.A., section 751.
20. *The Illinois Revised Statutes*, chapter 139, section 6.
21. See, for example, the following cases in which the ballot was upheld although names were not spelled correctly: *Hester v. Kamykowski*, 13 Ill. 2d 481, 150 N.E. 2d 196, 199 (1958); and *Behrensmeyer v. Kreitz*, 135 Ill. 591, 26 N.E. 704 (1891).
22. *McCreery v. Burnsmeier*, 293 Ill. 43, 127 N.E. 171 (1920).
23. *Hester v. Kamykowski, supra* note 21.
24. See *People ex rel. Richter v. Telford*, 103 Ill. App. 2d 132, 242 N.E. 2d 464 (1968), where the abbreviations "Dr." and "O.D." were held improper in connection with a candidate's name on the ballot.
25. *In re Dreyfus*, 175 Cal. 417, 165 P. 941; and *Sunday v. Hagenbuch*, 18 Pa. Co. 540.
26. *The Illinois Revised Statutes*, chapter 110A, section 344(b).
27. See *Knappenberger v. Hughes*, 377 Ill. 126, 35 N.E. 2d 317 (1941), where the ballots used said "For" and "Against" rather than "Yes" and "No" as required by the statute. Also see *People ex rel. DeRosa v. Chicago & N.R. Co.*, 391 Ill. 145, 62 N.E. 2d 460 (1945); *People ex rel. Henry v. N.Y.C.R.R. Co.*, 381 Ill. 490, 45 N.E. 2d 860 (1942); and *People ex rel. Davis v. Chicago, B. & Q. R. Co.*, 48 Ill. 2d 176, 268 N.E. 2d 411 (1971).
28. *The Illinois Revised Statutes*, chapter 74, section 82.
29. 50 U.S.C.A. section 1451, *et. seq.*
30. *The Illinois Revised Statutes*, chapter 46, sections 4-23, 5-29.01, 6-67.01, and 17-9.
31. 50 U.S.C.A., section 1464.
32. *Dunn v. Blumstein*, 405 U.S. 330, 31 L.Ed. 2d 274, 92 S.Ct. 995 (1972).
33. *Marston v. Lewis*, 410 U.S. 679, 35 L.Ed. 2d 667, 93 S.Ct. 1211 (1973).
34. *Dunn v. Blumstein, supra* note 32.

35. *Clark v. Quick*, 377 Ill. 424, 36 N.E. 2d 563 (1941).

36. *The Illinois Revised Statutes*, chapter 38, sections 1005-8-1 and 1005-9-1.

37. *The Illinois Revised Statutes*, chapter 38, sections 1005-8-3 and 1005-9-1.

38. *The Illinois Revised Statutes*, chapter 125, section 17.

39. *The Illinois Revised Statutes*, chapter 24, section 3-9-4. See, for example, *Village Code*, Village of Hazel Crest, chapter 24, section 24-22.

40. *United States v. Kusper*, 317 F. Supp. 761 (N.D. Ill., 1970).

41. *The Illinois Revised Statutes*, chapter 102, section 42.02.

42. See, for example, *Clarke, v. Commonwealth*, 159 Va. 908, 166 S.E. 2d 541, 543 (1932).

43. *The Illinois Revised Statutes*, chapter 78, section 8.

44. See also *Mann v. Powell*, 314 F. Supp. 677 (1970), where the court ordered names placed on the ballot in a "drawn by lot" manner.

45. *The Illinois Revised Statutes*, chapter 102, section 42.02.

46. *The Illinois Revised Statutes*, chapter 116, section 43.101. Also see: *People ex rel. Sherman v. Slater*, ___ Ill. App. 3d ___, 355 N.E. 2d 735 (1976).

47. *The Illinois Revised Statutes*, chapter 127, section 604-105.

48. *The Illinois Revised Statutes*, chapter 127, section 604-107.

49. *The Illinois Revised Statutes*, chapter 122, section 10-9; and chapter 102, section 3.

50. *People ex rel. Myers v. Haas*, 145 Ill. App. 283 (1908).

51. *The Illinois Revised Statutes*, chapter 122, section 102-2.

52. *The Illinois Revised Statutes*, chapter 99, section 3.

53. *Black v. Termunde*, 14 Ill. App. 3d 1937, 303 N.E. 2d 803 (1973); *Zahray v. Emricson*, 25 Ill. 2d 121, 182 N.E. 2d 756 (1962); and *Wagler v. Stoecker*, 393 Ill. 560, 66 N.E. 2d 408 (1946).

54. *Fiegenbaum v. McFarlane*, 399 Ill. 367, 77 N.E. 2d 816 (1948).

55. *Johnson v. Pautler*, 22 Ill. 2d 299, 174 N.E. 2d 675 (1971).

56. *Wood v. Hartman*, 381 Ill. 474, 45 N.E. 2d 864 (1942).

57. *Black v. Termunde, supra* note 53; *Waupoose v. Kusper*, 8 Ill. App. 3d 668, 290 N.E. 2d 903 (1973).

58. *Lang v. Board of Education of Community Unit School District No. 16*, 109 Ill. App. 2d 195, 249 N.E. 2d 862 (1969); *The Illinois Revised Statutes*, chapter 110, section 24.

59. *Zahray v. Emricson, supra* note 53.

60. *Joyce v. Blankenship*, 399 Ill. 136, 77 N.E. 2d 325 (1948).

61. *Whitley v. Frazier*, 21 Ill. 2d 292, 171 N.E. 2d 644 (1961) and *Smiley v. Lenane*, 363 Ill. 66, 1 N.E. 2d 213 (1936).

62. *Savage v. Frost*, 14 Ill. App. 3d 1036, 304 N.E. 2d 1 (1973); and *Smith v. Stewart*, 14 Ill. App. 3d 1039, 304 N.E. 2d 3 (1973).

63. *Doelling v. Board of Education of Community High School District No. 88*, 17 Ill. 2d 145, 160 N.E. 2d 801 (1959).

64. *Smiley v. Lenane, supra* note 61.

65. *Brown v. County Court of Alexander County*, 324 Ill. App. 657, 59 N.E. 2d 349 (1944).

66. *The Illinois Revised Statutes*, chapter 110, section 7.

67. *Bilderback v. Trico Community Unit School District No. 176*, 11 Ill. App. 3d 928, 297 N.E. 2d 26 (1973).

68. *Black v. Termunde, supra* note 53, and *Waupoose v. Kusper, supra* note 57.

69. *Mayfield v. Miles*, 266 Ill. 186, 107 N.E. 152 (1914); and *Arnold v. Keil*, 252 Ill. 340, 96 N.E. 819 (1911).

70. *Id.*

71. *Donovan v. Comerford*, 332 Ill. 230, 163 N.E. 657 (1928).

72. *The Illinois Revised Statutes*, chapter 110, section 46; and *Burton v. Powell*, 26 Ill. App. 3d 563, 325 N.E. 2d 789 (1975).

73. *Cummings v. Marcin*, 16 Ill. App. 3d 18, 305 N.E. 2d 606 (1973); *Louden v. Thompson*, 1 Ill. App. 3d 809, 275 N.E. 2d 476 (1971); and *Zahray v. Emricson*, *supra* note 53.

74. *Clarke v. Bettenhausen*, 296 Ill. 373, 129 N.E. 803 (1921).

75. *Whitley v. Frazier*, *supra* note 61; and *Smiley v. Lenane*, *supra* note 61.

76. *Louden v. Thompson*, *supra* note 73; *Shouse v. Dieterich Community Unit School District No. 30*, 3 Ill. App. 2d 474, 122 N.E. 2d 837 (1954). See the dissent in *Louden*.

77. *Smith v. Township High School District*, 335 Ill. 346, 167 N.E. 76, 78 (1929).

78. *Savage v. Frost*, *supra* note 62; and *Smith v. Stewart*, *supra* note 62.

79. *Parker v. Orr*, 158 Ill. 609, 41 N.E. 1002 (1895).

80. *Rexroth v. Schein*, 206 Ill. 80, 69 N.E. 240 (1903).

81. *Perkins v. Bertrand*, 192 Ill. 58, 61 N.E. 405 (1901).

82. *Barlick v. Kunz*, 375 Ill. 318, 31 N.E. 2d 283 (1940).

83. *Boland v. City of LaSalle*, 370 Ill. 387, 19 N.E. 2d 177 (1938).

84. See 17 I.L.P., *Elections*, sections 74-77, and the cases listed in Words and Phrases under the title "Distinguishing Mark."

85. *Slenker v. Engel*, 250 Ill. 499, 95 N.E. 618 (1911); and *Isenburg v. Martin*, 293 Ill. 408, 127 N.E. 663 (1920).

86. *Brents v. Smith*, 250 Ill. 521, 95 N.E. 484 (1911); *Grubb v. Turner*, Ill. 436, 102 N.E. 810 (1913); *Isenburg v. Martin*, *supra* note 85; and *Allen v. Fuller*, 332 Ill. 304, 163 N.E. 675 (1928).

87. *Brents v. Smith*, *supra* note 86; *Slenker v. Engel*, *supra* note 85; *Tuthill v. Rendleman*, 387 Ill. 321, 56 N.E. 2d 375 (1944); and *Mayes v. City of Albion*, 374 Ill. 605, 30 N.E. 2d 416 (1940).

88. *Barlick v. Kunz*, *supra* note 82; and *Tuthill v. Rendleman*, *id.*

89. *Spragins v. Houghton*, 3 Ill. 377 (1840).

90. *North Eastern Reporter Digest*, etc.

91. *Burton v. Powell*, *supra* note 72.

92. *Waupoose v. Kusper*, *supra* note 57.

93. *Carey v. Elrod*, 49 Ill. 2d 464, 275 N.E. 2d 367 (1971).

94. *Lombardi v. Board of Education of School District 108*, 19 Ill. App. 3d 372, 311 N.E. 2d 603 (1974); and *Louden v. Thompson*, *supra* note 73.

95. *Wood v. Hartman*, *supra* note 56.

96. *Anderson v. Wierschem*, 373 Ill. 239, 25 N.E. 2d 803 (1940).

97. *Sargent v. Newell*, 368 Ill. 479, 14 N.E. 2d 654 (1938). See also *Rogers v. Meade*, 363 Ill. 630, 2 N.E. 2d 924 (1936).

98. *Mayes v. City of Albion*, *supra* note 87.

99. *Crum v. Green*, 68 Ill. App. 2d 246, 215 N.E. 2d 817 (1966).

100. *Leach v. Johnson*, 20 Ill. App. 3d 713, 313 N.E. 2d 636 (1974).

101. *MacWherter v. Turner*, 52 Ill. App. 2d 270, 201 N.E. 2d 325 (1964).

102. *Tuthill v. Rendleman*, *supra* note 87.

103. For a discussion of directory and mandatory requirements, see *Johnson v. Pautler*, 22 Ill. 2d 299, 174 N.E. 2d 675 (1961).

104. *Drolet v. Stentz*, 83 Ill. App. 2d 202, 227 N.E. 2d 114 (1967); and *Lehman v. Hill*, 414 Ill. 173, 111 N.E. 2d 120 (1953).

105. See also *Lang v. Board of Education of Community Unit School District No. 16*, *supra* note 58.

106. *Flake v. Pretzel*, 381 Ill. 498, 46 N.E. 2d 375 (1943).

107. *Wagler v. Stoecker*, *supra* note 53.

108. *Glakemeier v. Calhoun*, 3 Ill. 2d 329, 121 N.E. 2d 513 (1954).

109. See I.L.P., *Mandamus*, sections 74-77.

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The author

Joseph A. Murphy is an attorney-at-law with the firm of Ancel, Glink, Diamond & Murphy, of Chicago. A specialist in school and municipal law, he is a 1953 graduate of the University of Illinois College of Journalism and a 1959 graduate of the University of Chicago Law School. He is a former news reporter and was commissioned as an Ensign in the U.S. Navy. He has been admitted to the bars in Illinois and Texas, is a member of the Chicago Bar Association, and is active in the National Association of College and University Attorneys. He has served on the legal staffs of the Chicago Housing Authority, Ecko Products Company, General Dynamics Corporation, and was for six years in charge of the contracts department of the Chicago Board of Education. He has authored chapters on elections for two publications—*Municipal Law* and *School Law*—for the Illinois Institute for Continuing Legal Education.